

**PRACTICE AND
PROCEDURE MANUAL
2018**



Copyright Office
Government of India

ARTISTIC WORKS

Contents

COPYRIGHT OFFICE	1
EXAMINATION PROCESS	1
1. INTRODUCTION	1
2. ARTISTIC WORK	2
3. REGISTRATION PREREQUISITES	4
3.1 FORMALITY CHECK.....	6
3.2 WAITING PERIOD.....	6
3.3 FORM XIV	7
3.4 STATEMENT OF PARTICULARS	7
3.5 STATEMENT OF FURTHER PARTICULARS	10
4. COPYRIGHTABLE SUBJECT MATTER.....	10

**Practice and Procedure Manual:
Artistic Work**

COPYRIGHT OFFICE

The Copyright Act of 1957 (hereinafter referred to as the “Act”), vide Section 9 mandated the establishment of an office to be called the Copyright Office (hereinafter referred to as the “Office”), for the purposes of the Act.

The Office administers the various functions set forth in the Act and the Copyright Rules of 2013 (hereinafter referred to as the “Rules”), including but not limited to maintaining the Register of Copyrights in which entries such as names and the addresses of authors, publishers and owners of copyright are entered therein.

EXAMINATION PROCESS

On receipt of an application, the Office conducts a Formality Check to ensure that the basic requirements (2 copies of work, Complete FORM-XIV, power of attorney (if applicable), prescribed fees etc.) are complied properly, and if not,¹ a letter, for necessary compliance, is issued to the applicant to remove the concerned discrepancy. The application that qualifies the Formality Check is assigned to the Examiner, to examine whether it satisfies the Protection Prerequisites and Registration Prerequisites as laid down under the Act and the Rules.² After examination of the application, it is submitted for final approval/further direction.

1. INTRODUCTION

This document reflects the general practices and procedures of Copyright Office for examination and registration of artistic works. It explains the process for examination of artistic work application(s), documentation of ownership; provides guidelines on how to identify the work of authorship, copyrightable subject matter and discusses the grounds on which a discrepancy letter may be issued.

This document does not cover every principle of copyright law, the practice and procedure set forth in the document do not in themselves have the force and effect of law. Matters of concern are set forth to explain the practice and procedure of the Office, in consistency with the

¹ In such cases, the status of concerned application(s) is updated as ‘Work Awaited’ on the website of Copyright Office.

² Rule 70 sets forth the mandatory requisites that are to be complied for every application.

Practice and Procedure Manual: Artistic Work

provisions of the Act and the Rules; and in case of ambiguity pertaining to various issues, reference have been made to case laws, in order to ease the understanding of provisions.

2. ARTISTIC WORK

Any work which is an original creation of an author or an owner fixed in a tangible form, is capable of being entered into the Register of Copyrights, irrespective of the fact that whether such work posses any artistic quality or not.

The definition of Artistic work as laid down under Section 2 of the Copyright Act, is fairly comprehensive and descriptive. Copyright shall subsists in any original artistic work comprising of paintings, sculptures, graphics, cartoons, etchings, lithographs, photography, drawings, plans, maps, diagrams, charts, buildings, models of buildings, moulds and casts for sculptures.

1. Definition of Artistic works

Artistic work” means— a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; a [work of architecture]; and any other work of artistic craftsmanship; as provided under **Section 2(c)** of the Copyright Act.

1.1. Work of architecture

“**Work of architecture**” means any building or structure having an artistic character or design, or any model for such building or structure as provided under **Section 2 (b)**. In addition to this, according to **Section 13 (2) (iii)**, in case of work of architecture, the work shall be located in India.

Further, read with **Section 13(5)** in case of work of architecture, copyright shall subsists only in the artistic character and design and shall not extend to process or methods of construction.

1.2. Photograph

“**Photograph**” includes photo-lithograph and any work produced by any process analogous to photography but does not include any part of a cinematograph film as provided under **Section 2 (s)** of the Copyright Act.

Practice and Procedure Manual: Artistic Work

1.3. Engravings

“**Engravings**” include etchings, lithographs, wood-cuts, prints and other similar works, not being photographs as provided under *Section 2 (i)* of the Copyright Act.

1.4. Work of Sculpture

“Work of Sculpture” includes casts and moulds as provided under Section 2 (za) of the Copyright Act.

1.5. Work capable of being used in relation to goods or services

A work capable of being represented graphically, which is capable of distinguishing goods or services of one undertaking from those of the goods or services of another undertaking shall be considered for the purposes of registration “**Work capable of being used in relation to goods or services**” such as brand symbols, labels logos, packaging, Cartoons etc.

1.6. Artistic Work applied for copyright registration which is capable of being registered as a Design under the Designs Act, 2000.

According to Section 2(d) of the Designs Act 2000, “*design*” means *only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 or property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957*”

An Industrial Design constitutes the ornamental or aesthetic aspect of an article. It can be in a form of a two-dimensional or a three dimensional drawing of any article, such works, provided that it shall be in connivance with the provisions of *Section 15* of the Copyright Act 1957, which affirms that –

**Practice and Procedure Manual:
Artistic Work**

(1) *Copyright shall not subsist under this Act in any design which is registered under the Designs Act, 2000 (16 of 2000).*³

(2) *Copyright in any design, which is capable of being registered under the Designs Act, 2000 (16 of 2000), but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his licence, by any other person.*⁴

may be applied for registration under the Copyright Act 1957.

The aforementioned works shall be considered as “Artistic work”, for the purpose of registration of Copyright, irrespective of the artistic craftsmanship of the work, provided it is expressed as a single work.

Fees for Registration of a Copyright in Artistic Category⁵

Artistic Works which are being used or capable of being used in relation to any goods or services	2000/- INR
Artistic Works which are not being used or are not capable of being used in relation to any goods or services	500/- INR

3. REGISTRATION PREREQUISITES

Once the application for registration is filled & submitted online, the same is mandatorily required to be sent, to the Copyright Office within 30 days of filing of the online applications, along with all necessary documents, being: -

- ✓ *Duly filled Form XIV, Statement of Particulars, and Statement of further Particulars, signed by the applicant*⁶, in case of a company, proprietorship or a firm the person who is

³ Section 15 clause 1, *Special provision regarding Copyright in designs registered or capable of being registered under the Designs Act, 2000 (16 of 2000)*

⁴ Section 15 clause 2, *Special provision regarding Copyright in designs registered or capable of being registered under the Designs Act, 2000 (16 of 2000)*

⁵ Serial No. 9, Second Schedule, of the Copyright Rules 2013.

⁶ In pursuance to Rule 70 clause 3, of the Copyright Rules 2013.

**Practice and Procedure Manual:
Artistic Work**

duly authorized to sign the application, along with the seal of the company, proprietorship or a firm.

The authority of the signatory shall be exhibited by a letter of Authority, or a Board resolution.

The application form shall not be acceptable, if signed by an attorney under whatsoever circumstances.⁷

- ✓ *Power of Attorney* signed by the applicant and duly accepted by the Attorney.
- ✓ *No Objection Certificate* from various other persons involved in the creation of work, in case the applicant is the author of the work No Objection Certificate is not required.
- ✓ *Search Certificate issued by the Trade Mark Registry*, in pursuance to *Section 45 of the Copyright Act, 1957 (proviso)*, in case of Artistic works used or capable of being used in relation to goods or services.

The application for registration of Artistic work used or capable of being used in relation to goods or services shall be filed within one year of the date of issue of the Search Certificate issued by the Trade Mark Registry.

- ✓ *An affidavit*, if the work is appearing to be capable of being registered under Designs Act.⁸

The contents of the affidavit shall include that the work is neither registered nor applied for registration under Designs Act 2000 in pursuance to :-

Rule 70(7) Copyright Rules 2013

Every application for registration in respect of an artistic work which is capable of being registered as a design under Designs Act, 2000, such application shall be accompanied by the statement in the form of an affidavit containing the following, :- namely

- a) *It has not been registered under Designs Act, 2000; and*
- b) *It has not been applied to an article through an industrial process and reproduced more than fifty times.*

⁷ Rule 70 (3) of the Copyright Rules 2013

⁸ In pursuance to Section 15 of the Copyright Act, 1957, and Rule 70 (7) of the Copyright Rules 2013.

**Practice and Procedure Manual:
Artistic Work**

Further the contents must also include that the work is not reproduced more than fifty times by any industrial process, in pursuance to *Section 15(2) of the Copyright Act 1957*

- ✓ *No Objection Certificate* from the publisher if publisher is other than the applicant.
- ✓ *No Objection Certificate* by the person whose picture is appearing on the work.
- ✓ *Two original & identical copies* of the work. (*the title of the work shall appear on the work*)

The FORM XIV, Statement of Particulars, Statement of Further Particulars, shall be in the Format as prescribed under Chapter XVIII - Schedule I - Copyright Rules 2013. A format of the same is also given at-

<http://copyright.gov.in/frmformsDownload.aspx>

3.1 FORMALITY CHECK

On receipt of an application at the Office, a ‘Formality Check’ of application is carried out to ensure that the basic requirements (2 copies of work, Complete FORM-XIV Power of Attorney, prescribed fees etc.) are complied. If an application, fails the ‘Formality Check’, a letter, for furnishing the necessary requirements, is issued to the applicant at his/her communication address.⁹ It is proposed to issue discrepancy related to communication on email ID of the applicant (if available) in near future to cut short the discrepancy removal period.

3.2 WAITING PERIOD

A minimum waiting period of thirty days, effective from the date of receipt of application is mandatory, for the purpose of receiving objection(s) from the person(s) who claims or has any interest in the subject matter of copyright or disputes the rights of the applicant to application submitted for registration.¹⁰ If no objection to such registration is received by the Registrar of Copyrights, the application may be processed, thereafter strictly on “first come first serve” basis and the actual period may vary from time to time as per work load.

⁹ In such cases, the status of concerned application(s) is updated as ‘Work Awaited’ on the website of Copyright Office.

¹⁰ Rule 70 (9) read with Rule 70 (10).

**Practice and Procedure Manual:
Artistic Work**

3.3 FORM XIV

Form XIV is a declaration of the applicant, whether he has complied with the prerequisites of filing of a registration application.

- The applicant must send notices to all the interested parties, prior to filing of the Copyright application and submit all necessary details thereof.¹¹
- The applicant shall provide the details of the requisite payment made.
- Further the applicant shall submit the communication address.
- Lastly, the applicant shall list out the documents submitted along with the application.

3.4 STATEMENT OF PARTICULARS

To be duly filled and signed by the applicant.

STATEMENT OF PARTICULARS		
COLUMN NO.	DETAILS	APPROPRIATE DETAILS TO BE FILLED BY THE APPLICANT
Column 1	Registration number	Registration number is not a mandatory column; it is to be filled by the Copyright Office once the work is entered into the Register of Copyright.
Column 2 (Mandatory)	Name, Address and Nationality of the Applicant	The correct and full details with respect to the author or owner or any other person interested in copyright in an artistic work, who has made the application for registration shall be submitted.
Column 3 (Mandatory)	Nature of the applicant's interest in the copyright of the work	The applicant shall indicate their nature of interest in the copyright of the work i.e., whether an author or an owner/publisher.
Column 4 (Mandatory)	Class and description of the work	The applicant shall mention appropriate class of work:- •Artistic – in case of registration of Artistic works. •The applicant is also required to indicate whether the Artistic work is used or capable of being used in relation to goods and services or not.
Column 5	Title of the work	The title which appears on the copy of the work

¹¹ In accordance with rule 70 of the Copyright Rules, 2012

**Practice and Procedure Manual:
Artistic Work**

(Mandatory)		submitted along with the applications.
Column 6	Language of the work	All the languages which are collectively used, in creation of the work shall be mentioned. Applicant can also mention the language in which the Title of the work is mentioned. In case of Artistic work this column may also be indicated as "NIL" in case no language is used.
Column 7 (Mandatory)	Name, address and nationality of the author and, if the author is deceased, the date of his decease	Correct and appropriate details of the Author (the person who has actually authored or was involved in the authoring of work. There can be more than one persons who can jointly and severally be the author of a work. A firm/organization cannot be an author of work by no means; this column shall always be filled with the name & details of a person.
Column 8 (Mandatory)	Whether work is Published or Unpublished	Status of the work at the time of filing the application, whether published or unpublished shall be indicated.
Column 9 (Mandatory if published)	Year and country of first publication and name, address and nationality of the publishers	Publisher details shall be submitted along with the year of Publication.
Column 10 (If applicable)	Years and countries of subsequent publications, if any, and names, addresses and nationalities of the publisher	Details of subsequent publisher shall be submitted along with the latest year of publication.
Column 11 (Mandatory)	Names, address and nationalities of the owners of the various rights comprising the copyright in the work and the extent of rights held by each, together with particulars of assignment and licenses, if any	The name, address & nationality of the persons who holds the various rights comprising the copyright in the work are required to be mentioned. In case the applicant himself intends to hold all the rights in the work, his particulars as already given against Col.2 may be mentioned.

**Practice and Procedure Manual:
Artistic Work**

<p>Column 12 (If Applicable)</p>	<p>Names, addresses and nationalities of other persons, if any, authorized to assign or license the rights comprising the copyright</p>	<p>If any person or persons other than the persons indicated in column 11 to whom author or applicant intends to authorize to assign or licence the copyright, on behalf of the owner, the name, address and nationality of such person may be indicated. If not, 'NIL' or 'N/A' may be indicated.</p>
<p>Column 13 (Mandatory)</p>	<p>If the work is an “artistic work”, the location of the original work, including name, address and nationality of the person in possession of the work. (In the case of an architectural work, the year of completion of the work should also be shown)</p>	<p>Location of the original work, including name, address and nationality of the person in possession of the work shall be indicated.</p>
<p>Column 14 (Mandatory if the work is capable of being used in relation to any goods or services)</p>	<p>If the work is an ‘artistic work’ which is used or is capable of being used in relation to any goods or services, the application shall include a certificate from the Registrar of Trade Marks in terms of the proviso to sub-section (1) of section 45 of the Copyright Act, 1957.]</p>	<p>Details of Search Certificate issued by the Trade Mark Registry shall be indicated.</p>
<p>Column 15 (Mandatory if applicable)</p>	<p>If the work is an “artistic work” whether it is registered under the Designs Act 2000. If yes give details.</p>	<p>Details with respect to Registration under Designs Act need to be indicated if necessary.</p>
<p>Column 16</p>	<p>If the work is an “artistic work” capable of being registered as a design under the Designs Act 2000, whether it has been applied to an article though an industrial</p>	<p>Details with respect to publication of that particular design shall be indicated.</p>

**Practice and Procedure Manual:
Artistic Work**

	process and , if yes, the number of times it is reproduced.	
Column. 17	Remarks	Applicant may mention any remarks relevant to the work, and its registration.

3.5 STATEMENT OF FURTHER PARTICULARS

The statement of Further Particulars, is primarily a declaration regarding the originality of the work.

- If the work is not an adaptation, Column 1 (a) is to be indicated as ‘Yes’ and the rest of the Columns, shall automatically be indicated as ‘N/A’.
- If the work is an adaptation, Col. 1 (a) shall be indicated as ‘No’.
- Further, the applicant should provide the details identifying that the prior or primary work, of which adaptation is opted, is a work in public domain or not and whether copyright still subsists in it.
- If in any such work, copyright subsists the applicant shall submit a No Objection Certificate in favor of the applicant, from such Copyright holder.
- Further, if the work applied for registration is an adaptation and the copyright still subsists in the prior or primary work, then certain details relevant to the prior work shall be indicated with respect to Column 2.

4. COPYRIGHTABLE SUBJECT MATTER

1. Works neither used nor capable of being used in relation to goods or services

Works neither used nor capable of being used in relation to goods or services may include but not limited to paintings, photograph, sculpture, drawing, sketches, maps, charts etc.

**Practice and Procedure Manual:
Artistic Work**

2. Works used or capable of being used in relation to goods or services

Works used or capable of being used in relation to goods or services may include but not restricted to labels, symbols, marks or logos, associated with a brand or a business.

3. How do we differentiate between artistic works capable of being used in relation to goods or services and artistic works which are not capable of being used in relation to goods or services?

Such artistic works which have potential to eventually turn into Trade Marks, or such marks which are outwardly associated with any brand identity represented by a business, protected under trademarks, are treated as artistic works capable of being used in relation to goods or services, for Copyright registration purposes and require submission of Search Certificate (TM-C) issued by the Trade Mark Registry, in pursuance to Section 45 proviso of the Copyright Act 1957. These include, brand logos, labels, packaging, designs potentially applicable in relation to goods or services, cartoons & figurative drawings potentially applicable in relation to goods or services, and henceforth. Rest may be treated as Artistic works which are not capable of being used in relation to goods or services, for which Search Certificate is not required to be submitted, such as paintings, drawings, sculptures, lithographs, etc.

4. If a photo appears on the Artistic work

If a photo of a person appears on the Artistic work, the applicant shall be required to submit a No Objection Certificate from the model.

If the applicant claims that the photo of a person appearing on the Artistic work is fictitious or purchased or downloaded, the applicant may be required to submit an affidavit stating the same in this regard, or a consent letter or a purchase agreement between the parties.

5. Cartoons and animation characters.

Cartoons and animated characters have a potential to be associated with a business or a brand, they can be applied on goods and can be commercially sold for monetary gains, or they can be applied in an animated game, or they can be used as mascots in events and brand promotion. Certain examples for such works are McDonald of the food chain brand Mc Donalds, Pillsbury animation, Vodafone zoo-zoos, hence for any such artistic work,

**Practice and Procedure Manual:
Artistic Work**

submission of Search Certificate is mandatory along with a fees of INR 2000/- for registration.

6. Board/card games

Board Games/ Card games are registered under Artistic as well as Literary category as it has both Artistic and Literary characteristics, However, they cannot be protected in its entirety. A board game author may seek the registration for the graphics & pictures in the board game under Artistic category, and the attributes of the protagonists and the instructions/rules of the game under literary category. Board games and Card games are Copyrightable under artistic category to the extent of the Artistic characteristics involved in the work. Board games and Card games may be approved for registration only if expressed as a single work. Any work of similar nature, appearing to be different/separate work may be considered as multiple works and in such cases applicant shall be required to apply for registration separately. The copyright law only protects the particular manner of the author's expression in artistic or literary form but does not cover the idea of the game, or methods of playing.

7. Is Search Certificate mandatory for registration of board/card games under artistic category?

Search Certificate is required for registration of board/card games as they may be used along with any brand whose logo or label appears on the work for commercial purposes. Search Certificate may not be required, when such works are non-commercially used or are used for purely educational purposes. The applicant may be required to submit an affidavit in this regard.

8. Artistic work comprising of government logos, labels, symbols or emblems

For registration of any artistic work comprising of, in full, or in part, any government logo, label or symbol, may not be eligible for registration of copyright unless the applicant is able to submit a No Objection Certificate from the concerned authority or department and clarifying how the work is a creation of author's own skill and labour.

Any such artistic work may be processed for registration, only if it is not in contravention with any Act or Rule applicable in India.

**Practice and Procedure Manual:
Artistic Work**

9. Certificates

A Certificate is an official document attesting a fact. For any work to be a copyrightable subject matter is to be created by the exercise of labour, skill and judgment of the author. Copyright does not subsists in certificates of any kind as Certificates are merely recordable documentation and neither possess any original Artistic skill or labor; nor does it express the uniqueness of the author's creativity. Mostly all certificates appear to be in a basic generic format.

10. A Photograph or a portrait of a person

An application for registration of a Photograph or a portrait of a person is copyrightable if, a No objection certificate of the person who appears on the work is provided, along with the applications.

As an exception No Objection Certificate in case of portraits of public figures is not required if the portrait is not objectionable in nature.

In case any rights to a photograph or portrait of a person are withheld by any organization or a trust and such photograph or a portrait of a person is applied for registration under artistic category, the applicant shall required to submit a No Objection Certificate from such organization or trust.

11. Collage

A collage is also a copyrightable subject matter. The applicant is required to submit a No Objection Certificate from the person/persons appearing in the collage if any.

12. Language of the Artistic work not mentioned with respect to Column 6 of the Statement of Particulars

While filing up the Statement of Particulars, Column 6, Language of the work, is a mandatory column. The applicant is required to not leave this column vacant. With respect to artistic works the applicant shall indicate all the languages used which are apparently visible on the work. In cases where no language is apparently visible on the work, the applicant shall mention the language in which the title of the work is depicted. However this column may also be indicated as "NIL", if no language is used at all in creation of the work.

**Practice and Procedure Manual:
Artistic Work**

13. Artistic works capable of being registered under Designs Act 2000.

Every Design is a drawing, but every drawing is not a design. For any work which qualifies to be a design as provided under Section 2(d) of the Designs Act, 2000 and is apparently capable of being registered under Section 10 of the Designs Act, but is applied for registration of copyright under Artistic category, may be approved for registration only after submission of an *affidavit* stating that the work is not applied for registration under Designs Act and it has not been reproduced more than 50 times by the applicant. Any such work shall be submitted as one work per application.

14. Architectural Drawings

An architectural drawing is a drawn expression of the Architect's original thoughts, expressed using technical signs, symbols, and graphical representations together to form an instruction to build a structure. In entirety, architectural drawings or plans are copyrightable subject matter.

15. Photographs of Stage Arrangements

Photographs of the Stage Arrangement can be copyrighted under artistic category. Each photograph shall be considered a separate work and separate applications shall be filed for each work.

16. Compilation of Artistic works

There is no provision for registration of compilation of artistic work; therefore for protection of such works under Artistic category, every work is to be filed as a separate and independent application, subject to fulfillment of registration prerequisites.

17. Title of the work

Title of the works cannot be protected under copyright as held by the Supreme Court in *Krishika Lulla v. Shyam Vithalrao Devkatta (2016) 2 SCC 521*.

18. Maps

Copyright provides for protection of author's original creation, "map" may include cartographic representations of area, such as terrestrial maps and atlases, marine charts, celestial maps and such three-dimensional works as globes and relief models. Geographical Maps can be protected under Copyright, provided that the applicant shall be

Practice and Procedure Manual: Artistic Work

able to furnish a No Objection Certificate from the source of creation or the Survey of India as a proof of authentication.

19. Pamphlets & posters

Posters and Pamphlets include both artistic as well as literary characteristics. They are entitled for copyright protection under artistic category only to the extent of the Artistic content of the work. The literary content in the Posters and Pamphlets shall be separately protected under literary category.

20. Sculptures & moldings

Sculptures, moldings or 3 dimensional models are subject matter of copyright protection. For the purpose of feasibility photographs or images of such sculptures are treated as original works. The applicant shall be required to mention in the application form that he/she is seeking protection for the Sculpture or 3 dimensional models and not just the photograph.

21. Painting

Painting is an artistic work whether or not it possesses any artistic quality [Section 2 (c) (i) and Section 13 (1) (a)]. For protection- a painting must be original and not a mere copy of another painting. The painting is not defined. However, painting without a surface is not painting. A painting must be on a surface of some kind.

22. Drawing

A drawing (including a diagram, map, chart or plan) is covered by the definition of artistic work **Section 2 (c) (i)** and accordingly if it is original it is entitled to copyright protection as an artistic work irrespective of its artistic quality. A drawing is not defined under the Copyright Act except as stated above. It will therefore, mean any kind of drawing including mechanical or engineering.

**PRACTICE AND
PROCEDURE MANUAL
2018**



Copyright Office
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**CINEMATOGRAFH
WORKS**

CONTENTS

COPYRIGHT OFFICE	1
EXAMINATION PROCESS	1
1. Introduction.....	1
2. Definition	2
2.1 Cinematograph Film	2
2.2 Term of Protection for Cinematograph works	2
3. Registration Prerequisites	2
3.1 Formality Check.....	3
3.2 Waiting Period	3
3.3 Meaning of publication.....	3
3.4 Prescribed Fee.....	4
3.5 One Registration Application for one work.....	4
3.6 Contents of NOC from various right-holders	4
3.7 Contents of an agreement obtained from various right-holders.....	4
3.8 Statement of Particulars	5
3.9 Meaning of the term “various right-holders”	6
3.10 Category of work	7
3.11 Difference between author, owner, and publisher	7
4. Commonly Observed Issues	8

Practice and Procedure Manual: Cinematograph Films

COPYRIGHT OFFICE

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The Office administers the various functions set forth in the Act and the Copyright Rules of 2013 (hereinafter referred to as the “Rules”), including but not limited to maintaining the Register of Copyrights in which entries such as names and the addresses of authors, publishers and owners of copyright are entered therein.

EXAMINATION PROCESS

On receipt of an application, the Office conducts a Formality Check to ensure that the basic requirements (2 copies of work, Complete FORM-XIV, power of attorney (if applicable), prescribed fees etc.) are complied properly, and if not,¹ a letter, for necessary compliance, is issued to the applicant to remove the concerned discrepancy. The application that qualifies the Formality Check is assigned to the Examiner, to examine whether it satisfies the Protection Prerequisites and Registration Prerequisites as laid down under the Act and the Rules.² After examination of the application, it is submitted for final approval/further direction.

1. Introduction

This document reflects the general practices and procedures of Copyright Office for examination and registration of cinematograph films works. It explains the process for examination of cinematograph films work application(s), documentation of ownership; provides guidelines on how to identify the originality of authorship, copyrightable subject matter and discusses the grounds on which a discrepancy letter may be issued.

This document does not cover every principle of copyright law, the practice and procedure set forth in the document do not in themselves have the force and effect of law. Matters of concern are set forth to explain the practice and procedure of the Office, in consistency with the provisions of the Act and the Rules; and in case of ambiguity pertaining to various issues, reference have been made to case laws, in order to ease the understanding of provisions.

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² Rule 70 sets forth the mandatory requisites that are to be complied for every application.

Practice and Procedure Manual: Cinematograph Films

2. Definition

2.1 Cinematograph Film

“Cinematograph film” means any work of visual recording and includes a sound recording accompanying such visual recording and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography including video films [Section 2 (f)].

Visual recording” means the recording in any medium, by any method including the storing of it by any electronic means, of moving images or of the representations thereof, from which they can be perceived, reproduced or communicated by any method [Section 2 (xxa)].

By definition, every recorded work with moving visuals/images will be considered a cinematograph film.

2.2 Term of Protection for Cinematograph works

The term of protection for cinematograph films is 60 years. The term of protection starts from the year which follows the year in which the work was published first [Section 26].

3. Registration Prerequisites

- Form XIV
- Statement of Particulars [SoP]
- 2 copies of the work (01 copy if work is published)
- Power of Attorney [if filing through an advocate or an individual other than the applicant]
- No Objection Certificate [NOC] or an agreement from various other persons involved in the creation of work. This is not needed if the applicant is the sole creator of the work (The applicant needs to submit an affidavit in this case, details of which are provided later).
- NOC/Agreement from the publisher if publisher is other than the applicant.

NOTE:

(1) In case of cinematograph films, Statement of Further Particulars (SoFP) is not necessary.

(2) Both Form XIV and SoP must be signed by the applicant who may be the author/owner of the right as per Rule 70 (3) of Copyright Rules, 2013.

Practice and Procedure Manual: Cinematograph Films

3.1 Formality Check

On receipt of an application at the Office, a 'Formality Check' of application is carried out to ensure that the basic requirements (2 copies of work, Complete FORM-XIV Power of Attorney, prescribed fees etc.) are complied. If an application, fails the 'Formality Check', a letter, for furnishing the necessary requirements, is issued to the applicant at his/her communication address.³

3.2 Waiting Period

A minimum waiting period of thirty days, effective from the date of receipt of application is mandatory, for the purpose of receiving objection(s) from the person(s) who claims or has any interest in the subject matter of copyright or disputes the rights of the applicant to application submitted for registration.⁴ If no objection to such registration is received by the Registrar of Copyrights, the application may be processed, thereafter strictly on "first come first serve" basis and the actual period may vary from time to time as per work load.

3.3 Meaning of publication

The meaning of publication is provided under **Section 3** of the Copyright Act 1957, which states that –

For the purposes of this Act, "publication" means making a work available to the public by issue of copies or by communicating the work to the public.

The meaning of Communication to public is provided under **Section 2(ff)** of the Copyright Act, which states that –

"communication to the public" means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.

Examples of Publication of a Cinematograph Film (including but not limited to)

1. Showcasing a cinematograph film through cable TV or Direct-to-Home (DTH) channel such as Tata Sky/Airtel TV/online video sharing platforms etc.
2. Releasing the cinematograph film in market in a CD/DVD/Flash Drive or any other means of storage.

³ In such cases, the status of concerned application(s) is updated as 'Work Awaited' on the website of Copyright Office.

⁴ Rule 70 (9) read with Rule 70 (10).

Practice and Procedure Manual: Cinematograph Films

3. Release of the film in cinema halls, theaters, or multiplexes even if the hall remains empty and no one turns up to watch the movie.

3.4 Prescribed Fee

Fee for cinematograph films is INR 5,000 per work. Accordingly, the applications for registration of cinematograph films must be accompanied by the corresponding fee.

3.5 One Registration Application for one work

A separate application needs to be filed for each work and separate fee needs to be paid. For example, one recorded video will be considered as one work. Multiple videos in one CD/Flash Drive will be considered as multiple works and not a single work.

3.6 Contents of NOC from various right-holders

There is no specific format for the No Objection Certificate. It just needs to state the following.

1. The author is the creator of the cinematograph film.
2. The author is aware that a copyright registration application is being submitted in the applicant's name.
3. The author has no objection to the above.
4. The author has received full and final consideration (if any) in lieu of his services.

The original or notarized copy of a No Objection Certificate needs to be submitted to the office and it must bear the author's details and signature.

3.7 Contents of an agreement obtained from various right-holders

As per Section 19, an assignment or licensing agreement should specify the following elements.

- Work
- Rights assigned
- Duration of assignment (not mandatory)
- Territorial extent of assignment (not mandatory)
- Amount of royalty/consideration payable to author or his legal heirs (if applicable)

The agreement should specify the names of all parties and should bear the signatures of all parties.

For an assignment agreement to be valid, it must be in writing and signed by the assignor or his duly authorized agent [**Section 19 (1)**].

Practice and Procedure Manual: Cinematograph Films

3.8 Statement of Particulars

While examining the applications for registration of sound recording or cinematograph films, apart from regular examination, the following three columns in particular need to be examined with attention.

Column 2

Column 2 specifies the name of the entity in whose name the copyright will be registered. This entity can be an individual, body corporate, or any other organization.

Column 7

Col. 7 specifies the name of author. In case of a cinematograph film, the producer can be the author [Section 2 (d) (v)]. Therefore, the name of the producing company can appear in this column.

Note: The following possibilities have been observed in this case

(i) Original producing company is the applicant

Section 2 (d) (v) provides that **producer is the author of a cinematograph film**, therefore if original producing company is the applicant, then the **name of the original producer must appear in Column 7 in such case. Agreements with/NOC from various right-holders must form part of the application.**

(ii) Applicant producing company enters into an agreement with the original producing company for distribution/publication of content

In such cases, the original producer (assignor) is another company (which may be a regional producing company) which enters into an assignment agreement with another producing company (assignee) and assigns all rights, including copyright to another producing company (assignee).

In such a case, the assignee will become the owner of copyright and can apply for copyright registration in their own name, specifying their interest as *owner* in Column 3.

Practice and Procedure Manual: Cinematograph Films

However, even after assignment of ownership of copyright, the original producing company (assignor) remains the author of the work and **Column 7 should state the name of the original producer (assignor) in this case.**

The application should be accompanied with agreements between various right-holders and the original producing company as well as agreements between original producing company and the producing company to which the rights are being assigned.

(iii) An individual is the applicant and the sole creator of the work

If a person being the sole creator of a work applies for registration, only his/her name should appear against Column 2, 7, and 11.

Column 11

In. Col.11 of the SoP, names, address and nationalities of the owners of various rights comprising the copyright in the work and the extent of rights held by each, together with the particulars of assignments and license, if any need to be mentioned.

In case an agreement/NOC from various right-holders is provided and the applicant indicates their own name against this column, it is acceptable as agreement/NOC from various right-holders assigning their rights in favor of the owner is provided. Therefore, if the applicant intends to hold all rights themselves, they can indicate that the particulars in this column are the same as particulars indicated against Column 2.

3.9 Meaning of the term “various right-holders”

Works like cinematograph films are made with contributions from various persons such as lyricists, music directors, composers, script writers, performers, singers, dancers, actors etc. All these persons have rights in the work to the extent of their contribution in the work. Therefore, a no objection certificate or an assignment agreement is needed from all these persons in favor of the applicant.

Practice and Procedure Manual: Cinematograph Films

3.10 Category of work

Category will be determined on the basis of nature and definition of work.

“Cinematograph Film”- Any visual recording such as videos, short films, movies, animated movies, documentaries etc. will be a cinematograph film. Visual recording includes moving images [Section 2 (xxa)] and therefore, any recording of moving images like photographs, stills, drawings, animated content etc. will be considered a cinematograph film.

Recordings of a video game or animations are moving images and therefore will be considered as cinematograph film.

Video recordings of choreography/dance performances/classroom lectures/public delivery of lectures will also be considered cinematographic films.

3.11 Difference between author, owner, and publisher

As per Section 2(d)(v) of the Act, the author of cinematograph film is the producer.

Producer”, in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work [Section 2 (uu)].

Owner is the person who owns or by virtue of an agreement, is entitled to own the copyright in a work.

Publisher is the person who makes the work available to public.

(i) If the original producing company is the applicant, the same can be author/owner in the work and indicating either of the interests against column 3 is acceptable.

(ii) In case of assignment agreement between two or more producing companies, the assignee will be the owner of copyright and against column 3; the interest may be indicated as *owner*.

(iii) In case of an individual applicant who has solely created and published the work, such individual will be author, owner, and publisher (in absence of any agreement to the contrary) and author/owner as interest may be indicated against column 3.

**Practice and Procedure Manual:
Cinematograph Films**

(iv) In case of an individual applicant, if any person other than such individual has created the work, the interest of such individual in the work will be *owner* and in Column 7, details of the creator of work will appear.

In all the above cases, if publisher is different from author/owner, details of such publisher will appear in Column 9 and Column 10 (in case of subsequent publications) and an agreement or No Objection Certificate from the publisher should be provided in favour of the author/owner.

4. Commonly Observed Issues

Some common issues have been observed during day-to-day examination of applications pertaining to cinematograph films. These issues, along with their solutions are being listed below.

1. A single CD/Flash Drive containing multiple videos

Every application shall be in respect of **01 work only [Rule 70 (2) of the Copyright Rules, 2013]**. There can be two possibilities if multiple videos are submitted in the same flash drive/CD/DVD.

(i). Applicant has paid separate fee for each video and filed separate applications with different diary numbers and for the sake of convenience, submitted all the videos in a single CD/Flash Drive

In this case, it is acceptable to submit different videos in a single CD/Flash drive and in absence of provisions/rules stating otherwise, a discrepancy should not be sent to the applicant on this basis.

(ii). Applicant has paid the fee only in respect of 01 application and filed only one application in respect of all the videos submitted

Section 2 (y), “*work*”, clearly states that work means “*a*” *cinematograph film*.

In view of the clear terms laid down by the very definition of work itself, **only 01 video can be registered against submission of a single application and payment of a single fee.**

Practice and Procedure Manual: Cinematograph Films

In this case, a discrepancy letter may be sent to the applicant, stating that the work submitted consists of multiple videos and only one video can be registered against the present payment of fee and present diary number and instead of seeking clarification as to which particular work is to be registered among the multiple works submitted, clearly indicating the applicant vide discrepancy letter issued, to submit fresh copy of particular work to be registered.

2. Submission of Statement of Further Particulars [SoFP] with Cinematographic Film Work

Sometimes, applicants submit SoFP along with the application. Since SoFP is not necessary in case of cinematographic films, while printing the application form, SoFP is not filled and it is observed that discrepancy letters are generated and sent to the applicant on this basis.

However, since the SoFP is not required in case of cinematographic film, a discrepancy should not be sent to the applicant in respect of SoFP. As per the format for Statement of Further Particulars (SoFP) provided by the Copyright Rules, 2013, SoFP is **only applicable for original literary/dramatic/artistic/musical works and therefore not applicable for cinematograph films.**

Therefore, in the below cases, a discrepancy should not be sent to the applicant.

- 1. Applicant has not submitted SoFP with an application for registration of cinematograph film.**
- 2. Applicant has submitted a print out of the SoFP but is either not filled or incomplete.**

3. Blacking out the Consideration Amount

Section 19 (3) states that **an assignment agreement must specify the amount of royalty** or other consideration payable to the author or his legal heirs. Therefore, blacking out of consideration amount is not acceptable and assignment agreements must clearly reflect the consideration amount.

Practice and Procedure Manual: Cinematograph Films

4. Applicant is the sole creator of the work

In such case, an affidavit, stating that applicant is the sole creator of the work and no other person holds any rights in the work, is needed to be submitted with the application. Original/notarized copy of the affidavit needs to be submitted.

5. Mismatch of Title

In case of cinematograph films, the title as indicated against Col. 5 of SoP must be identical with the title appearing on the work submitted for registration. If the title appears either on the work submitted (eg. on the CD cover/CD itself) or in the cinematograph film, it is acceptable.

If the title does not appear anywhere at all or is completely different from the one stated on the Statement of Particulars, it gives rise to a discrepancy.

6. Sending Photocopies of Agreements

Original copies of assignment agreements/Licensing Deeds/NOCs should be sent along with the application. Alternatively, notarized copies of agreements/NOCs can also be sent.

However, there may be cases where multiple applications for registration of cinematograph films are filed by the same applicant and the parties, consideration, and other terms of the agreements/NOCs are the same for each work. In cases like these, the same agreement is entered into by both parties and therefore, **it is acceptable if the application is accompanied by original notarized copies of agreements/NOCs.**

7. Filing under Cinematograph Film category for literary works such as movie scripts

Even if a literary work is intended to serve as the script for a movie or screenplay for a recorded performance, it will be considered for registration under the literary category only and not under the category of cinematograph film.

Only videos/works of visual recordings will be considered for registration under the category of cinematograph film.

**Practice and Procedure Manual:
Cinematograph Films**

8. Photographs of persons appearing on CDs or CD covers

If a CD or CD cover is imprinted with the photograph of a person, an NOC from such person is not needed if such person does not hold any rights in the work. This is because the copyright in this case is in respect of the audio/visual content and not the artistic content appearing on the CD/CD cover.

9. What details should appear in Column 12?

Filling up Column 12 is optional. In this column, names, addresses and nationalities of other persons *if any*, to whom applicant intends to authorize other persons to assign or license the rights comprising the copyrights should be indicated.

Therefore, this column should indicate the details of all persons other than the persons indicated in column 11 to whom applicant intends to give the authority to assign or license the work.

10. Should NOC of persons whose details appear in Column 11 and/or Column 12 be submitted with the registration application?

Assigning/licensing the rights comprised in a work and authorizing others to do the same is a right conferred on the owner of work [Section 14].

Therefore, it is the prerogative of the owner to grant authorizations in respect of assignment or licensing of the work and **there is no need to ask for a clarification/explanation from the applicant in this regard nor is it necessary to ask the applicant to submit an NOC/agreement from the persons named in Column 11 and/or Column 12.**

11. Can names of films be copyrighted?

No. Names and titles are not subject to copyright registration.

**PRACTICE AND
PROCEDURE MANUAL
2018**



Copyright Office
Government of India

LITERARY WORKS

CONTENTS

COPYRIGHT OFFICE	1
EXAMINATION PROCESS	1
1. Introduction	1
2. Literary Work As Defined.....	2
2.1 Distinction between Literary and Dramatic Work.....	2
2.2 Computer Programme.....	3
2.3 Tables and Compilations including Computer Databases	3
3. Adaptation	4
4. Translation.....	4
5. Protection Prerequisites	5
a) Originality.....	5
b) Copyrightable Authorship and Subject Matter	6
c) Publication	6
6. Registration Prerequisites	7
a) Formality Check	7
b) Waiting Period.....	7
d) Copies of Work.....	11
e) One Registration Application for one Work.....	12
f) Relevant Documents	12
7. Foreign Work.....	14
8. Government Work	14
9. Copyrightable Subject Matter.....	15
10. Non-Copyrightable Subject Matter	19

**Practice and Procedure Manual:
Literary Works**

COPYRIGHT OFFICE

The Copyright Act of 1957 (hereinafter referred to as the “Act”), vide Section 9 mandated the establishment of an office to be called the Copyright Office (hereinafter referred to as the “Office”), for the purposes of the Act.

The Office administers the various functions set forth in the Act and the Copyright Rules of 2013 (hereinafter referred to as the “Rules”), including but not limited to maintaining the Register of Copyrights in which entries such as names and the addresses of authors, publishers and owners of copyright are entered therein.

EXAMINATION PROCESS

On receipt of an application, the Office conducts a Formality Check to ensure that the basic requirements (2 copies of work, Complete FORM-XIV, power of attorney (if applicable), prescribed fees etc.) are complied properly, and if not,¹ a letter, for necessary compliance, is issued to the applicant to remove the concerned discrepancy. The application that qualifies the Formality Check is assigned to the Examiner, to examine whether it satisfies the Protection Prerequisites and Registration Prerequisites as laid down under the Act and the Rules.² After examination of the application, it is submitted for final approval/further direction.

LITERARY WORK

1. Introduction

This document reflects the general practices and procedures of Copyright Office for examination and registration of *literary works*. It explains the process for examination of literary work application(s), documentation of ownership; provides guidelines on how to identify the originality of authorship, copyrightable subject matter and discusses the grounds on which a discrepancy letter may be issued.

This document does not cover every principle of copyright law, the practice and procedure set forth in the document do not in themselves have the force and effect of law. Matters of

¹ In such cases, the status of concerned application(s) is updated as ‘Work Awaited’ on the website of Copyright Office.

² Rule 70 sets forth the mandatory requisites that are to be complied for every application.

Practice and Procedure Manual: Literary Works

concern are set forth to explain the practice and procedure of the Office, in consistency with the provisions of the Act and the Rules; and in case of ambiguity pertaining to various issues, reference have been made to case laws, in order to ease the understanding of provisions.

2. Literary Work As Defined

The Act states that copyright subsists in *original* literary work,³ and Section 2(o) of the Act provides that- “literary work” *includes computer programmes, tables and compilations including computer databases.*”

Irrespective of the quality, style or literary merit, a work may be considered as literary, if it is expressed in print or writing or in some form of notation or symbols. A literary work is something which is intended to afford either information or instruction, in the form of literary enjoyment.⁴ The term ‘literary’ in copyright law is to be used in a sense somewhat similar to the use of word literature in political or electioneering literature and refers to written or printed matter.⁵ Literary works includes but are not limited to textbooks, poem, magazine, catalogue, letters, novel, dissertation, lyrics of song etc.

2.1 Distinction between Literary and Dramatic Work

Copyright subsists in original dramatic work and its adaptation. Section 2(h) provides that “dramatic work” *includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, form of which is fixed in writing or otherwise but does not include a cinematograph film.*

Choreography and scenic arrangement is the art of arranging or designing of ballet or stage dance in symbolic language. It is a form of dramatic work. The Act makes a distinction between a ‘literary work’ and a ‘dramatic work’. The difference between the two rests on the fact that a literary work allows itself to be read while a dramatic work “forms the text upon which the performance of the plays rests”.⁶

³ Section 13(1)(a)

⁴ Exxon Corp v Exxon Insurance Consultants International Ltd (1982 RPC 69)

⁵ University of London Press Ltd. v. University Tutorials Press Ltd., (1916) 2 ChD 601.

⁶ Academy of General Education, Manipal v. B. Malini Mallya, AIR 2009 SC 1982

Practice and Procedure Manual: Literary Works

A dramatic work is something that is capable of being written or printed or reduced to some permanent form, however being so reduced, it does not include a cinematograph film and indicates the mode by which it should be expressed.

2.2 Computer Programme

Section 2 (ffc) of the Act provides that- *“computer programme” means a set of instructions expressed in words, codes, schemes or in any other form, including a machine-readable medium, capable of causing a computer to perform a particular task or achieve a particular result.*

A work may be registered as a computer programme under literary works, if it is a subject matter of the aforesaid definition and qualifies the Protection Prerequisites and Registration Prerequisites. For this purpose, applicant may submit an application for registration under Software Category (Not Literary Category)⁷, accompanied by the source and object code.⁸

2.3 Tables and Compilations including Computer Databases

In the Indian Copyright Act, there are no specific meanings attached to the terms tables, compilation and databases, but these are copyrightable subject matter and are protected as literary work.⁹ In addition, judiciary has read into laws, to provide a meaning of these terms and to determine the extent of copyright protection granted, for such works. To obtain copyright protection for a table, compilation including computer databases, the work must exhibit some creativity or originality in the selection or arrangement of the contents of the work. If the labour and skill required to make the selection and to compile the tables which form its items is negligible then no copyright can subsist in it.¹⁰

The selection of some common place tables in a pocket diary does not involve the exercise of any taste or literary judgment and such a compilation does not constitute original

⁷ Rule 69 (1), Part VI

⁸ Rule 70 (5)

⁹ Section 2(o)

¹⁰ GA Cramp & Sons Ltd v. Frank Smythsons (1944) AC 329

**Practice and Procedure Manual:
Literary Works**

literary work.¹¹ *If no originality is found in the expression and content of the work, the work will not qualify for copyright protection.*

The notion of originality of content of the work cannot realistically be present in any kind of compilation. Nevertheless compilations as such come within the ambit of copyright protection for literary works, since they are referred to as collections in the Berne Convention, but in reality they do not possess originality in the same sense as genuine literary works. Originality in their case is tested on the grounds of the selection and arrangement of the material used to compile the final work. The author of a compilation does not really create anything new, but merely selects and arranges prior work. In such cases, copyright protection is only provided for the new original literary work of authorship and not to the work as a whole.

3. Adaptation

Section 2(a) of the Act provides the meaning of “adaptation”. Adaptation of a work may be registered, provided that the author contributed sufficient amount of new authorship to the work. It is the new version of prior or primary work or a work that has been converted, abridged, re-arranged or altered from a prior or primary work.

Copyright will subsist in an adaptation to the extent of the new and original material contained in the adaptation which was not present in the original work. However, if copyright still subsists in the original work, the publication of the adaptation will be possible only with the licence or written consent of the copyright owner of the original work.

4. Translation

The term 'translation' is not defined in the Act. According to the Oxford dictionary 'Translation' means “*a written or spoken rendering of the meaning of a word or text in another language*”. It is an activity that aims at conveying meaning or meanings of a given linguistic discourse (work) from one language to another.

¹¹ *Ibid.*

Practice and Procedure Manual: Literary Works

Copyright subsists in translation of a work.¹² In translations, where “*brain, labour and skill have been used, or where some literary works are carried out, the person who did the said work in the translation is the author having copyright over the same.*”¹³ If the copyright in the original work still exist, written consent or a license from the copyright owner of the original work is necessary, before the publication can be made.

An adaptation or translation of a work may be registered, provided that it constitutes copyrightable subject matter. These works are a subset of subject matter categories, rather than a separate or distinct category of work. In other words, the new work that the author contributed to the prior work must fall within one or more classes listed in Section 13 of the Act.

5. Protection Prerequisites

For a literary work to be protected under the Copyright law, it must qualify certain necessary requirements which are discussed below briefly:

a) Originality

Originality is the *sine qua non* of copyright. A work that merely reflects an “*age-old practice, firmly rooted in tradition and so commonplace that it has come to be expected as a matter of course*” is not remotely creative. Folklores are also exempted in this sense. Exercise of efforts on the part of the author should not be trivial in nature and thus should not be a mere exercise of the mechanical function of copying the work of another. Variation must be substantial in nature than merely trivial.

A literary work is entitled to copyright protection, if it is an “original literary” work. The word original does not demand original or inventive thought, but only that the work should not be copied but should originate from author.¹⁴ *An ‘original’ must be a “product of an exercise of skill and judgment”, where ‘skill’ is “the use of one’s knowledge, developed aptitude or practiced ability in producing the work” and*

¹² Blackwood & Sons Ltd. v. Parsuraman, AIR 1959 Mad 410

¹³ Hafiz v. Abdurahiman Makhdoomi, 1999 KHC 605

¹⁴ *Supra* 5.

Practice and Procedure Manual: Literary Works

'judgment' is "the use of one's capacity for discernment or ability to form an opinion or evaluation by comparing different possible options in producing the work".

The Indian copyright law mandates that not every effort or industry, or expending of skill, results in copyrightable work, but only those, which create works that are somewhat different in character, involve some intellectual effort, and involve a minimum degree of creativity. The authorship involved in creation of work should be a result of substantial or distinguishable variation and not a result of trivial variation.

The Copyright Office will examine the work for determining whether it satisfies the originality requirement and this should not be interpreted in a manner that the work should be novel, distinctive, innovative or unique. Each case would be scrutinized on its individual merits to establish originality as per the current approach.¹⁵

b) Copyrightable Authorship and Subject Matter

For a work to qualify as a copyrightable subject matter under literary class, it must have *de minimis* literary expression in the form of text, notes or symbols. It can be expressed in the form of a book, novel, magazine, catalogue, computer programmes, tables, compilation, translation or adaptation of a preexisting work etc.

Copyright office examines the work to determine whether it constitutes copyrightable subject matter and examine the information provided in the application and also the work enclosed with the application, to ascertain whether the work qualify as literary work.

c) Publication

A Literary Work (except in the case of Foreign Literary Works) to qualify for copyright protection the work, apart from the requisites discussed above, should also qualify the following conditions:

¹⁵ Balanced approach adopted by the Supreme Court in *Eastern book Company and Others v. D.B. Modak and Another*, 2008 (36) PTC 1 (SC)

**Practice and Procedure Manual:
Literary Works**

- 1) The work is first published in India.
- 2) Where the work is first published outside India, the author is at the date of such publication must be a citizen of India.
- 3) Where the work is first published outside India and the author was dead at the date of such publication, the author at the time of his death must be a citizen of India.
- 4) In the case of an unpublished work, the author is at the date of making of the work a citizen of India or domiciled in India.

6. Registration Prerequisites

Any Literary Work, which qualifies the Protection Prerequisites, may be registered with the Copyright Office, provided that it met certain registration prerequisites which includes but are not limited to as provided below:

a) Formality Check

On receipt of an application at the Office, a 'Formality Check' of application is carried out to ensure that the basic requirements (2 copies of work, Complete FORM-XIV Power of Attorney, prescribed fees etc.) are complied. If an application, fails the 'Formality Check', a letter, for furnishing the necessary requirements, is issued to the applicant at his/her communication address.¹⁶

b) Waiting Period

A minimum waiting period of thirty days, effective from the date of receipt of application is mandatory, for the purpose of receiving objection(s) from the person(s) who claims or has any interest in the subject matter of copyright or disputes the rights of the applicant to application submitted for registration.¹⁷ If no objection to such registration is received by the Registrar of Copyrights, the application may be processed, thereafter strictly on "first come first serve" basis and the actual period may vary from time to time as per work load.

¹⁶ In such cases, the status of concerned application(s) is updated as 'Work Awaited' on the website of Copyright Office.

¹⁷ Rule 70 (9) read with Rule 70 (10).

**Practice and Procedure Manual:
Literary Works**

c) Form XIV

After the completion of waiting period, the application is processed for examination to examine whether it satisfies the statutory requirements laid down under the Act and the Rules.

The author or publisher of, or the owner of or other person interested in copyright in a literary work may make an application in FORM-XIV by online/offline mode accompanied by the prescribed fees i.e. **INR 500 per work** in the form of payment gateway/DD/IPO, as specified in the Second Schedule of the Rules.¹⁸

FORM-XIV is further divided into three parts; **(i) Application/Declaration Form (ii) Statement of Particulars (iii) Statement of Further Particulars.**

(i) Application/ Declaration Form

The applicant should mention the details of the person(s) and the notice, which was sent in compliance of Rule 70 (9), against Col. 2.¹⁹ Further, the details of the payment of prescribed fee and the communication address²⁰ of the applicant should be mentioned in Col. 3 and 4 respectively. Against Col. 7, the list of enclosures (if any) should be mentioned. Lastly, only the applicant should sign on the application/declaration and should also mention the date and place.

(ii) Statement of Particulars (SoP)

The applicant should carefully fill the details in SoP, since the particulars entered therein are reflected on the Register of Copyrights (Office Copy) and Extracts from the Register of Copyrights (Applicant Copy). Tips for filling each Column (Col.) of SoP for literary work is provided in the table below:

Statement of Particulars	Particulars that may be entered
Col. 1	To be filled in the Copyright Office

¹⁸ Section 45 of the Act read with Rule 70.

¹⁹ Not a mandatory requirement and if no such notice is required to be sent, 'NIL' may be indicated.

²⁰ In case of a foreign applicant, s/he should provide a communication address within India.

**Practice and Procedure Manual:
Literary Works**

Col. 2 (Mandatory)	The author or publisher of, or the owner of or other person interested in copyright in a literary work, who made the application for registration should provide his/her Name, address and Nationality.
Col. 3 (Mandatory)	The applicant should mention his/her interest in the copyright of the work i.e., whether <i>an author, owner or publisher etc.</i>
Col. 4 (Mandatory)	Class of the work is to be mentioned as: <ul style="list-style-type: none"> • Literary for Literary Work or dramatic work, and • Software or Computer Programme for a Computer Programme.
Col. 5 (Mandatory)	The title which appears on the work should be exactly mentioned here.
Col. 6 (Mandatory)	The language which is used in the creation of the work should be mentioned and in case of multiple languages are used; all the languages should be necessarily mentioned. If Hindi language is used with English alphabets, the same shall be mentioned as Hindi only. In case of Computer Programme, only the programming language used in the work is to be mentioned. For eg. C, C++, C#, Java etc.
Col. 7 (Mandatory)	The name, address and nationality of the person(s) who has created/authored or was involved in the creation/authorship of work. In case, there is more than one author, the details of every such person should be mentioned. A firm/organization cannot be an author of work. Therefore the details of the person(s), who has actually created the work i.e. only natural person (human being), should be provided
Col. 8 (Mandatory)	Status of the work at the time of application, whether published or unpublished should be mentioned.
Col. 9 (Mandatory if	If published, the name, address & nationality of the publisher is to be mentioned along with the year and country of publication.

**Practice and Procedure Manual:
Literary Works**

work is published)	
Col. 10 (Mandatory if work is published)	In case of subsequent publication is made after the Year as provided in Col. 9, the name, address & nationality of the publisher is to be mentioned along with the year and country of publication and if there is no subsequent publication, (N/A) or (NIL) may be indicated.
Col. 11 (Mandatory)	The name, address & nationality of the person(s) who hold(s) the various rights comprising the copyright in the work are required to be mentioned. In case the applicant himself intends to hold all the rights in the work, his particulars as already given against Col.2 may be mentioned. In case the applicant is a partnership firm, the names of all the partners and their respective shares in the copyright may be indicated.
Col. 12 (Mandatory)	If any person is authorized to assign or licence the copyright, on behalf of the owner, the name, address and nationality of such person may be indicated. If not, 'NIL' or 'N/A' may be indicated.
Col. 13 – Col. 16 (Not Relevant)	These Columns pertains to the 'artistic work' and are irrelevant for the purpose of Copyright Application for Literary work and hence are to be indicated as 'NIL' or 'N/A'.
Col. 17 (Optional)	Applicant may mention any remarks relevant to the work, and its registration.

Lastly, only the applicant should sign on the **Statement of Particulars** and should also mention the date and place.

Practice and Procedure Manual: Literary Works

(iii) Statement of Further Particular (SoFP)

Despite the fact that this part of FORM-XIV is extremely relevant for the applications pertaining to the works of Adaptation or Translation of literary work, it is also necessary to be filled properly for other literary works.

- If the work is not an adaptation or translation, only Col. 1 (a) is to be indicated as 'Yes' and the rest of the Columns, should be indicated as 'NIL' or 'N/A'.
- If the work is an adaptation or translation, Col. 1 (a) should be indicated as 'No'.
- Further, the applicant should provide the details identifying that the prior or primary work, of which translation or adaptation is opted, is a work in public domain or not and whether copyright still subsists in it.
- Subsequently, if the work applied for registration is a translation or adaptation and the copyright still subsists in the prior or primary work, then certain details relevant to the prior or primary work should be mentioned in Column 2.
- Applicant may mention any remarks relevant to the work (applied for registration) and the prior or primary work which is translated or adapted.
- Lastly, only the applicant should sign on the **Statement of Further Particulars** and should also mention the date and place.

d) Copies of Work

Every application for registration should be accompanied by two identical copies of the work. In case of application for computer programme, it shall be accompanied by two copies of source code and object code. **The Source code and Object code should be provided in digital medium i.e. machine readable format and not in written or text form on paper.**

During examination of the work by the Examiners, the work enclosed with the application is cross-checked with the details/information provided in the FORM-XIV. Such determination may include but are not limited to as indicated below:

**Practice and Procedure Manual:
Literary Works**

- (i) Title of the work as indicated against Col. 5 should appear on the work itself.
- (ii) Language of the work as mentioned in Col. 6 should be identical with the language used in creation or authorship of work.
- (iii) Name of the author as indicated against Col. 7 should appear on the work itself.
- (iv) Details of the publisher and publication, appearing on the work should be identical to those indicated against Col. 8-10 of SoP.

e) One Registration Application for one Work

An application submitted to the Office, for registration of copyright, shall be in respect of one work only. Copies of Literary Work submitted in digital medium should contain only one work, which should be easily identifiable and in an accessible format. Literary work in the form of compilation, if submitted in non-digital or digital copy, should be compiled into an individual work.

f) Relevant Documents

Apart from the requirements discussed above, an application may be required to be submitted with certain documents, which are mandatory for the proper and complete filing of an application for registration of copyright. An inclusive list of such documents is provided below:

(i) Who should sign the application?

Every application made for the registration of copyright should be signed only by the applicant (not the Advocate), who may be an author or owner of right.²¹ Each part of the FORM-XIV is to be signed by the applicant only.

- If the applicant is more than one person, all applicants may sign the application. However, if the copyright is claimed under Col. 11 of SoP in favour of all the applicants/organization, it may not be necessary that application be signed by all the applicants.
- If the applicant is a firm/organization, the authorized signatory may sign the application on behalf of the applicant. In such cases, the applicant may

²¹ Rule 70 (2)

**Practice and Procedure Manual:
Literary Works**

submit **Board Resolution** in favor of the authorized signatory. However, this requirement may be optional depending on case to case basis.

- If the applicant is a partnership firm, the application is to be **signed by all the partners of the firm**. However, if the copyright is claimed under Col. 11 of SoP in favour of all the partners/firm, it may not be necessary that application be signed by all the partners.
- If an application is submitted by the attorney or any other individual, on behalf of the applicant, an original **power of attorney/notarized copy** to that effect should be submitted. However, the attorney cannot sign the application on behalf of the applicant. Also, notarized copy of a notarized PoA (in place of original one) or any other document may not be admitted.

(ii) No Objection Certificate

A No Objection Certificate (hereinafter referred to as 'N.O.C') or a deed of assignment is required to be submitted with the application in the cases which are (including but not limited to) as mentioned below:

- If the application is submitted by the owner of copyright, it shall be enclosed with an original copy of no objection certificate issued by the author in his favor.²² It means that, if the details provided in SoP, indicates that the applicant is different from the person whose name appears as author of work against Col. 7 of SoP, a N.O.C in original should be enclosed with the application.
- In case of work of joint authorship, if one or more author applies for registration of copyright, a N.O.C in original from the author(s) other than the applicant(s), in favor of the applicant, should be enclosed with the application.
- If the application is submitted by the publisher of copyright, it shall be enclosed with an original copy of no objection certificate issued by the author in his favor.

²² Rule 70 (3)

**Practice and Procedure Manual:
Literary Works**

- In case the publisher of work is different from the owner/author of work, a N.O.C in original from the publisher(s) in favor of the applicant should be enclosed with the application.
- In any case during the examination of application, if the interest of any person in subject matter of the copyright or any dispute with respect to the right of applicant to is identified, the applicant may be required to submit an original N.O.C from such person in his favor.
- In any of the aforementioned cases, if the author of work is deceased, the death certificate of the author and the N.O.C from all the legal heirs of the author/notarized copy of succession certificate should be submitted with the application.
- In case the death certificate of author cannot be procured otherwise, an affidavit to that effect, should be submitted by the applicant. However, its admissibility may be examined on case to case basis.

7. Foreign Work

For purposes of copyright registration, the term “foreign works” generally refers to works created by author(s) who are not citizens of India and/or works that were first published abroad. In case of unpublished works, the author was on the date of making of work, not a citizen or not domiciled in India. The foreign works are accorded same treatment as if they were Indian work, as provided under Chapter IX of the Act and may be registered with the Copyright Office of India, provided that the work qualifies the Protection and Registration prerequisites as enumerated under Indian Copyright Law.

8. Government Work

“Government work” as defined under Section 2(k) of the Act, means a work which is made or published by or under the direction or control of (i) the Government or any department of the Government (ii) any legislature in India or (iii) any Court, Tribunal or other judicial authority in India. Any work, which is a subject matter of the said definition, will be treated as a

Practice and Procedure Manual: Literary Works

“Government work” and will be eligible for copyright registration only if the Government itself seeks for registration or the applicant has been granted authorization from the said Government department or the owner of work.

In case, a literary work submitted for registration bears the logo, name or any other description which insinuates that the work belongs to or is created under the direction or control of the above mentioned, a clarification may be requested from the applicant to clarify as to how the applicant is seeking registration in his own name.

9. Copyrightable Subject Matter

This part discusses and list down the works/content, (including but not limited to) that may qualify as a copyrightable subject matter and may be eligible for registration under the Act.

- **BOOKS/ E-BOOKS**

Books written, in print or in any other digital form may be protected either in individual or joint authorship (in case the work is created by two or more persons).

- **NEW EDITIONS OF BOOKS**

New editions of books may also be considered for fresh registration of copyright, if there is a substantial change in the new edition and not just trivial changes.

- **NOVELS**

Novels are also a subject matter for copyright protection if these are fixed in written or in print or in any other digital form.

- **STORY**

Short stories are also covered under literary category if they are fixed into writing, in print or in any other digital form.

- **PLAYS**

As per section 2(h) of the Copyright Act, “dramatic work” includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, form

Practice and Procedure Manual: Literary Works

of which is fixed in writing or otherwise but does not include a cinematograph film. Thus, Plays are copyrightable as original dramatic works, if these are fixed in writing or in print.

- **POEM**

A single poem or a book of poems will fall under the head of literary category.

- **SONG LYRICS**

Lyrics of songs are also eligible for protection as literary works and, therefore, are copyrightable.

- **CONCEPT NOTE**

If a concept note is definitive and not just an idea, but there is an expression and is reduced in writing, it is eligible for copyright protection. In Anil Gupta vs. Kunal Dasgupta, the Delhi High Court held that, an idea per se has no copyright. But if the idea is developed into a concept note fledged with adequate details, then the same is capable of registration under the Copyright Act.

- **LETTERS**

Letters are protected under copyright law if they are original literary works. Further, it is important to note that letters which are generic in nature will not be entitled for copyright registration.

- **LECTURES, SERMON AND SPEECHES**

Section 2(n) of the act states that lecture includes address, sermon and speech. These are copyrightable under literary category, only if they are reduced in writing, in print or in any other digital format.

- **TABLES**

Tables are copyrightable by virtue of Section 2(o) of the act which provides that literary works include tables also.

- **JUDICIAL PRONOUNCEMENTS**

These contain in a clear and precise language the legal principle deriving from the previous judgment, or the facts and circumstances which bring the matter within the framework of the

Practice and Procedure Manual: Literary Works

principle or rule of law or practice. Therefore these are considered as original literary work entitled for registration if sufficient exercise of skill and judgment is employed by way of writing head notes, editorial notes and foot notes would qualify. Further it is to be noted that raw judgments delivered by any court of law are not copyrightable.

- **COMMENTARIES**

Commentaries are allowed for registration because the work includes appropriate exercise of skill and judgment. This is because knowledge which is public domain is not used as it is; but the author has put sufficient efforts to explain such knowledge through examples, etc.

- **COMPILATIONS**

Compilations are entitled to be registered under literary category provided that sufficient exercise of skill and judgment is employed. Neither 'table' nor 'compilation' is defined in the Act. However it is clear that these works include databases, as the definition of 'literary work' is inclusive rather than exhaustive. **Cambridge dictionary** defines the term 'compile' as “to collect information from different places and arrange it in a book, report or list.” **Oxford dictionary** defines the term 'compilation' as “The action or process of producing something, especially a list or book, by assembling information collected from other sources.”

Relying on the Latin maxim “*expressio unius est exclusio alterius*”, one may easily conclude that an express reference of compilations under the definition of literary works excludes the artistic compilations. It can be manifested that compilation of photographs/pictorial images does not qualify to be registered under the literary category.

- **DIRECTORIES/ENCYCLOPAEDIA/DICTIONARIES**

These are allowed to be registered as compilations under literary category. These are also considered as original in the copyright sense because sufficient exercise of skill and judgment has been applied by the author.

**Practice and Procedure Manual:
Literary Works**

- **RESEARCH THESIS/RESEARCH PAPERS/DISSERTATION**

These are considered as original literary works thus are allowed for registration. In such cases, NOC from the college or institution under whose direction and control the work has been created is required to be submitted in original in favour of the applicant.

- **COMIC BOOKS**

A comic book is a work where a story is depicted by means of some images in different frames. These may or may not be followed by words, dialogues, etc. Only the literal element can be protected under literary category and applicant should submit a declaration stating that he is applying for copyright registration for the literal element only. But in case the applicant intends to seek copyright in the images, then, he must submit a separate application for each of such image with the prescribed fee, under the artistic category.

- **WEBSITE CONTENT**

Only the literary element of the website is entitled for registration under literary category.

- **PANCHANG (ALMANAC)**

In **Lala Ramswaroop Ramnarayan and Sons versus Commr of C. Ex. & S.T., Bhopal**, it was observed that a Panchang displays information regarding tithi, nakshatra etc., substantially rather than just providing general mentioned on a calendar. Further it was observed that PANCHANG cannot be categorized as 'calendars' because less than 50% of the page space displays the date sequence of the calendar month. In **Khemraj Shrikrishandas vs Garg & Co. and Anr.**, it was observed that copyright exists in panchang.

- **TICKETS**

In **Rai Toys Industries V. Munir Printing Press (1982)**, the ticket used in the game of tambola is entitled for copyright as it involves, a form of tables of numbers requiring investment of skill, labour and originality in preparation.

- **QUESTIONNAIRE AND QUESTION PAPERS**

In **Aggarwala Publishing House V. Board of High School and Intermediate Education and Anr.**, it was held that copyright subsist in question papers.

**Practice and Procedure Manual:
Literary Works**

- **BROCHURE/ CATALOGUE/ PAMPHLET**

The dictionary meaning of Catalogue is – “*it is a complete list of items, typically one in alphabetical or other systematic order*”. Pamphlet is defined as “*a small booklet or leaflet containing information or arguments about a single subject*”. And brochure is defined as “*a small book or magazine containing pictures and information about a product or service*”.

Referring to the above stated definition it is clear that they fall under the literary category. It is important to note that these works are either purely literary in content or a mixture of both literary and artistic content and may be subject to copyright registration, provided that the content/ work qualifies the protection and registration prerequisites. However, if such work contains purely artistic work, then the applicant should submit separate application for each of such image with the prescribed fee under the artistic category.

- **ACTIVITY BOOKS**

Activity books may be subject to copyright registration, provided that the content/ work qualify the protection and registration prerequisites.

- **TRANSLATION/ADAPTATION/ABRIDGEMENT OF LITERARY WORKS**

These may be protected under literary category only if it is original and the author of such work has employed sufficient labour, skill and judgment in it. For the purpose of registration, if the copyright in the original work still exist, written consent or a license from the copyright owner of the original work is to be submitted.

10. Non-Copyrightable Subject Matter

This part discusses and list down the work/content, (including but not limited to) that do not qualify as a copyrightable subject matter and hence are eligible for registration under the Act.

- **SINGLE WORD**

A single word cannot be provided copyright protection under literary work. The logic is that it involves no labour, skill and judgement. Also, if copyright is extended to a single word then it would eliminate the word from usual usage. In **Associated electronics v. Sharp tools**,

Practice and Procedure Manual: Literary Works

(1991), a single word can't be registered under literary category but may be registered under artistic category if it is represented in an artistic manner.

- **TITLES**

Titles per se are not protected under copyright law. It was held by the Supreme Court in *Krishika Lulla v. Shyam Vithalrao Devkatta* (2016) 2 SCC 521, that title of the works cannot be protected under copyright.

- **TWO OR THREE SENTENCES**

Two or three sentences on their own do not afford sufficient information, instruction or literary enjoyment to qualify as a literary work. Hence, these are not protected under literary category.

- **SLOGANS**

Slogans are not literary works. In *Pepsico Inc vs. Hindustan coca cola* (2005), the court held that advertising slogans were prima facie not protectable under the copyright act. They could be protected under the law of passing off in case the plaintiff has made out a case.

- **CERTIFICATES**

Certificates may be considered as a formal document or written assurance which states an official fact and are generally used as evidence for certain purposes. Certificates are usually monotonous as it contains mere common words or formats which are generic in nature. Certificates are not considered as copyrightable subject matter as it falls under the narrow category of works in which the creative spark is utterly lacking or so trivial as to be virtually non-existent. The presentation of such words or formats in the form of certificate does not qualify the *de minimis quantum* of 'creativity' or 'originality' under the copyright law.

- **BLANK FORMS**

Blank forms are not protected by copyright if they are designed for recording information but do not in themselves convey any information. The blank forms rule was first articulated in *Baker v. Selden*, (1982). Hence, blank forms are not a subject matter of copyright as there is not originality involved.

Practice and Procedure Manual: Literary Works

- **WEBSITES**

Website usually consists of different rudiments which may be copyrightable subject matter that falls within any one of the classes of works set forth in Section 13 of Copyright Act, 1957. The component parts of website can be in different form of digital files such as text, tables, computer programmes, compilations including computer databases (“literary works”); photographs, paintings, diagram, map, chart or plan (“artistic works”); works consisting of music and including graphical notation of such work (“musical works”); “sound recordings” and “cinematograph films”. Website *as a whole* is not subject to copyright protection.

- **MATHEMATICAL FORMULAS/ALGORITHMS**

It does not qualify for copyright registration in literary category. In the case of a mathematical formula, it could be argued that since there is a standardized notation for expressing mathematical concepts, the idea and the expression are inseparable; therefore copyright protection does not apply.

- **POCKET DIARIES & CALENDARS**

In **Deepak printers v. Forward stationery mart and others (1981)**, the court ruled that there is no copyright subsists in a calendar even though certain pictures of deities and public personalities and some decorative features were incorporated in the calendar when no such separate copyright in them was claimed.

Pocket journals that contain, in addition to the usual pages, information of the type that appears in the calendars, postal information, and a selection of days and dates of the year are not considered literary works for the purposes of copyright.

- **RECIPE**

Copyright law does not protect recipes that are mere list of ingredients. However, copyright protection can be extended to a substantial literary expression - such as a description, explanation or illustration - that accompanies a recipe or formula or a combination of recipes, as in a recipe book/cook book.

Practice and Procedure Manual: Literary Works

- **LAYOUT ALONE**

There is no copyright in general layouts. In **Schove vs. Schmincke (1886)**, it was held that layout of coupon is not the subject of copyright.

- **FLOW CHARTS**

Charts are a subject matter protected under artistic category. Hence, flow charts being charts are entitled for copyright protection under artistic category instead of literary category.

- **FLASH CARDS**

Flash cards are covered under the category of artistic works but in a case where such flash card majorly involves literal content then it may be allowed to be registered under literary category.

- **SCREENSHOTS/SNAPSHOTS OF APP**

An **App** is a complete, self-contained computer program that is designed to perform specific tasks. Usually called 'Apps' for short, application programs are the most familiar forms of software and come in a very wide variety of types. An App usually has primarily dynamic content and is designed for user interaction. It may be used directly or indirectly in a computer or hand held electronic device.

An App may be registered as a computer program under literary works as provided under Section 2(o) of the Copyright Act, 1957. For this purpose applicant is required to submit an application for registration under software category, accompanied by the source and object code as provided under Rule 70 (5) of the Copyright Rules 2013.

It is important to note that the registration will cover any screen displays generated by that program, provided that the computer programme (code) generating the screen display is submitted by the applicant. However, in such case the owner of the computer programme and that of the screen display should be the same.

Mere snapshots of screen displays of an app are not eligible for copyright protection.

**PRACTICE AND
PROCEDURE MANUAL
2018**



Copyright Office
Government of India

MUSICAL WORKS

Contents

COPYRIGHT OFFICE	1
EXAMINATION PROCESS	1
1. INTRODUCTION.....	1
2. MUSICAL WORK	2
2.1 Definition	2
2.2 Author of the musical work	2
2.3 Term of Protection for Musical Works.....	3
2.4 Adaptation.....	3
2.5 Arrangement or Transcription.....	3
3. DIFFERENCE BETWEEN MUSICAL WORK & SOUND RECORDING.....	4
4.1 Formality Check.....	7
4.2 Waiting Period	7

**Practice and Procedure Manual:
Musical Work**

COPYRIGHT OFFICE

The Copyright Act of 1957 (hereinafter referred to as the “Act”), vide Section 9 mandated the establishment of an office to be called the Copyright Office (hereinafter referred to as the “Office”), for the purposes of the Act.

The Office administers the various functions set forth in the Act and the Copyright Rules of 2013 (hereinafter referred to as the “Rules”), including but not limited to maintaining the Register of Copyrights in which entries such as names and the addresses of authors, publishers and owners of copyright are entered therein.

EXAMINATION PROCESS

On receipt of an application, the Office conducts a Formality Check to ensure that the basic requirements (2 copies of work, Complete FORM-XIV, power of attorney (if applicable), prescribed fees etc.) are complied properly, and if not,¹ a letter, for necessary compliance, is issued to the applicant to remove the concerned discrepancy. The application that qualifies the Formality Check is assigned to the Examiner, to examine whether it satisfies the Protection Prerequisites and Registration Prerequisites as laid down under the Act and the Rules.² After examination of the application the concerned application is submitted for final approval/further direction.

1. INTRODUCTION

This document reflects the general practices and procedures of Copyright Office for examination and registration of musical works. It explains the process for examination of musical work application(s), documentation of ownership; provides guidelines on how to identify the work of authorship, copyrightable subject matter and discusses the grounds on which a discrepancy letter may be issued.

This document does not cover every principle of copyright law, the practice and procedure set forth in the document do not in themselves have the force and effect of law. Matters of

¹ In such cases, the status of concerned application(s) is updated as ‘Work Awaited’ on the website of Copyright Office.

² Rule 70 sets forth the mandatory requisites that are to be complied for every application.

Practice and Procedure Manual: Musical Work

concern are set forth to explain the practice and procedure of the Office, in consistency with the provisions of the Act and the Rules; and in case of ambiguity pertaining to various issues, reference have been made to case laws, in order to ease the understanding of provisions.

2. MUSICAL WORK

A musical work is the composition itself and does not include the lyrics or any sounds. It receives the full set of rights under copyright law, just like the literary, dramatic or artistic work. Generally, a sound recording is based on a musical work and in such cases, the author of sound recording is required to obtain permission from the owner of musical work.

2.1 Definition

Section 2(p) of the Act provides that- *“musical work” means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with music.*

2.2 Author of the musical work

According to the section 2(d)(ii) the *author* in relation to the musical work is a “Composer”.

Whereas according to section 2 (ffa) “*Composer*”, in relation to a musical work, means the person who composes the music regardless of whether he records it in any form of graphical notation.

An application for Musical Work may also be filed by joint authors/composers. Section 2(z) defines “*work of joint authorship*” as a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;

Practice and Procedure Manual: Musical Work

2.3 Term of Protection for Musical Works

As per Section 22 of the Act, the term of copyright protection for musical work published within the *lifetime of the author until sixty years from the beginning of the calendar year next following the year in which the author dies.*

In case of joint authorship work, the term shall be counted at or immediately before the date of the death of the author who dies last.

2.4 Adaptation

Section 2(a)(iv) defines “adaptation” as stated below

“adaptation” means, “in relation to a musical work, any arrangement or transcription of the work; ”

Hence, according to section 2 (a) (iv) ‘Adaptation’ in relation to musical works means ‘*any arrangement or transcription of the work*’. Copyright subsists in arranging music by adding accompaniments, new harmonies, new rhythm and the like, and transcribing it for different musical forces.

2.5 Arrangement or Transcription

Arrangement: It refers to a musical work which resulted from the rearrangement of an existing musical work.

Transcription: In relation to music it may be defined as an arrangement of a musical composition for some instrument or voice other than the original.

For instance Franz Liszt, a prolific 19th-century Hungarian composer, was the greatest arranger in the history of music. About half of his more than 800 known piano compositions are arrangements of his own or **other composers' music**. Schubert song transcriptions, Beethoven symphony transcriptions and paraphrases of operas by Mozart, Bellini, Donizetti and Verdi poured from his pen. Had he, Mr. Franz been alive in the present time, his arrangements could easily become the subject matter of Copyright.

Practice and Procedure Manual: Musical Work

In the similar manner, the best suited example of adaptation in today's time, are remixing of musical compositions, which involves alteration of original musical composition by adding, removing, and/or changing the arrangement of such composition.

3. DIFFERENCE BETWEEN MUSICAL WORK & SOUND RECORDING

It has been observed that few of the applicants, while filing the copyright registration applications, face difficulty in differentiating between Musical Works and Sound Recording Works.

As observed by the Hon'ble Supreme Court in **Indian Performing Rights Society v. Eastern Indian Motion Pictures Association [AIR1977 SC 1443]** "*In a musical work "Copyright is not the soulful tune, the super singing, the glorious voice or the wonderful rendering. It is the melody or harmony reduced to printing, writing, or graphic form"*

Sound Recording has been defined under Section 2(xx) as a *recording of sounds* from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced.

A Sound Recording Copyright may be claimed in the aggregate of sound embodied in any tangible medium, including phonograph discs, open-reel tapes, cartridges, cassettes, player piano rolls, and other material of objects in which sound are fixed and can be communicated either directly or with the aid of machine or device. (Nimmer on Copyrights, 2010)

When a graphical notation of a musical work is recorded in any medium from which sound may be produced, it amounts to Sound Recording.

The author of a sound recording work is the *Producer* of the sound recording, as opposed to Composer being the author of Musical Work.

'Producer' has been defined under Section 2(uu) as in relation to a cinematograph film or sound recording, means a person who takes the work the initiative and responsibility for making.

For example: When a composer develops a melody which is represented as a *sheet music* (which may include Western, Swaras, or any other form of graphical musical notation) it will be

**Practice and Procedure Manual:
Musical Work**

registered under Music category. However, when the same melody is recorded in CD, Flash Drives or any other medium of recording in which sound are fixed and can be communicated either directly or with the aid of machine or device, the said *recording* will become registrable under the Sound Recording category.

4. REGISTRATION PREREQUISITES

S. No.	Particulars	Requirements	Remark
I.	Form to be submitted	Form XIV including Statement of Particulars and Statement of Further Particulars, in original.	The Form must be signed by the Applicant and not by the agent/attorney/ advocate. In case of multiple applicants, the form must be signed by all the applicant or in the contrary, the form must accompany an Authorisation Letter in favour of the person signing the application on behalf of the applicant(s). In case the subject matter of registration is an adaptation, the applicant must give details of the original work and its author/composer.
II.	Fee	INR 500/-	Fee may be submitted Inform of DD or IPO in the name of the Registrar of Copyrights payable at New Delhi; It may also be submitted via Online Transfer.
III.	Documents to be submitted along with the Form	Power of Attorney, if filed by agent/attorney/ advocate	Must be submitted in original; Must be duly stamped and notarised; Must also be accepted by the agent/attorney/ advocate.
		No objection Certificate	In case the Author of the Work under application is other then the Applicant, a No Objection Letter from the author

**Practice and Procedure Manual:
Musical Work**

			<p>indicating his/her no objection to such registration, must be filed in original.</p> <p>If work is developed in course of employment services, a declaration regarding the same along with notarized copy of Service Agreement.</p> <p>In case of an adaptations, if the original author/composer is other than the applicant, No Objection Letter from the said author/composer must be submitted along with the application authorising the use of his/her original work and stating his/her no objection for the registration of the adaptation.</p>
		Board Resolution/ Authorization Letter (if applicable)	<p><i>In case of Company:</i> Board Resolution authorizing the person to sign the application on behalf of the applicant company.</p> <p><i>In case of Partnership:</i> If all the partners are not signing the application, then document authorizing a Partner for signing the application on behalf of all the Partners.</p> <p><i>Both must be submitted in original or a duly notarized copy of the same.</i></p>
IV.	Copy of Work	2 Copies	<p>Work must be submitted as Graphical Notations (Sheet Music) which may include Western, Swaras, or any other form of graphical musical notation.</p> <p>The work must also clearly depict the title of the work and authors name.</p>

Practice and Procedure Manual: Musical Work

4.1 Formality Check

On receipt of an application at the Office, a ‘Formality Check’ of application is carried out to ensure that the basic requirements (2 copies of work, Complete FORM-XIV Power of Attorney, prescribed fees etc.) are complied. If an application, fails the ‘Formality Check’, a letter, for furnishing the necessary requirements, is issued to the applicant at his/her communication address.³

4.2 Waiting Period

A minimum waiting period of thirty days, effective from the date of receipt of application is mandatory, for the purpose of receiving objection(s) from the person(s) who claims or has any interest in the subject matter of copyright or disputes the rights of the applicant to application submitted for registration.⁴ If no objection to such registration is received by the Registrar of Copyrights, the application may be processed, thereafter strictly on “first come first serve” basis and the actual period may vary from time to time as per work load.

³ In such cases, the status of concerned application(s) is updated as ‘Work Awaited’ on the website of Copyright Office.

⁴ Rule 70 (9) read with Rule 70 (10).

**PRACTICE AND
PROCEDURE MANUAL
2018**



Copyright Office
Government of India

**SOUND RECORDING
WORKS**

CONTENTS

COPYRIGHT OFFICE	1
EXAMINATION PROCESS	1
1. Introduction.....	1
2. Definitions and Term of Protection	2
2.1 Sound Recording.....	2
2.2 Term of Protection for Sound Recording.....	2
3. Registration Prerequisites	2
3.1 Formality Check.....	3
3.2 Waiting Period	3
3.3 Meaning of Publication.....	3
3.4 One Registration Application for one work.....	4
3.5 Content of No Objection Certificate	4
3.6 Contents of an agreement.....	4
3.7 Statement of Particulars	5
3.8 Meaning of the term “various right-holders”	6
3.9 Difference between author, owner, and publisher	6
3.10 Category of work	7
4. Commonly Observed Issues	7

**Practice and Procedure Manual:
Sound Recordings**

COPYRIGHT OFFICE

The Copyright Act of 1957 (hereinafter referred to as the “Act”), vide Section 9 mandated the establishment of an office to be called the Copyright Office (hereinafter referred to as the “Office”), for the purposes of the Act.

The Office administers the various functions set forth in the Act and the Copyright Rules of 2013 (hereinafter referred to as the “Rules”), including but not limited to maintaining the Register of Copyrights in which entries such as names and the addresses of authors, publishers and owners of copyright are entered therein.

EXAMINATION PROCESS

On receipt of an application, the Office conducts a Formality Check to ensure that the basic requirements (2 copies of work, Complete FORM-XIV, power of attorney (if applicable), prescribed fees etc.) are complied properly, and if not,¹ a letter, for necessary compliance, is issued to the applicant to remove the concerned discrepancy. The application that qualifies the Formality Check is assigned to the Examiner, to examine whether it satisfies the Protection Prerequisites and Registration Prerequisites as laid down under the Act and the Rules.² After examination of the application, it is submitted for final approval/further direction.

1. Introduction

This document reflects the general practices and procedures of Copyright Office for examination and registration of sound recording works. It explains the process for examination of sound recording work application(s), documentation of ownership; provides guidelines on how to identify the originality of authorship, copyrightable subject matter and discusses the grounds on which a discrepancy letter may be issued.

This document does not cover every principle of copyright law, the practice and procedure set forth in the document do not in themselves have the force and effect of law. Matters of concern are set forth to explain the practice and procedure of the Office, in consistency with the

¹ In such cases, the status of concerned application(s) is updated as ‘Work Awaited’ on the website of Copyright Office.

² Rule 70 sets forth the mandatory requisites that are to be complied for every application.

Practice and Procedure Manual: Sound Recordings

provisions of the Act and the Rules; and in case of ambiguity pertaining to various issues, reference have been made to case laws, in order to ease the understanding of provisions.

2. Definitions and Term of Protection

2.1 Sound Recording

“Sound recording” means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced. [Section 2 (xx)]

By definition, any recorded audio will be considered a sound recording. For example, a song, a recorded speech, or an audio book.

2.2 Term of Protection for Sound Recording

The term of protection for sound recording is 60 years. The term of protection starts from the year which follows the year in which the work was published first. [Section 27]

3. Registration Prerequisites

- Form XIV
- Statement of Particulars [SoP]
- 2 copies of the work (01 copy if work is published)
- Power of Attorney [if filing through an advocate or an individual other than the applicant]
- No Objection Certificate [NOC] or an agreement from various other persons involved in the creation of work. This is not needed if the applicant is the sole creator of the work (The applicant needs to submit an affidavit in this case, details of which are provided later).
- NOC/Agreement from the publisher if publisher is other than the applicant.

NOTE:

- (1) In case of sound recording, statement of further particulars (SoFP) is not necessary.
- (2) Both Form XIV and SoP must be signed by the applicant who may be the author/owner of the right as per Rule 70 (3) of Copyright Rules, 2013.

Practice and Procedure Manual: Sound Recordings

3.1 Formality Check

On receipt of an application at the Office, a ‘Formality Check’ of application is carried out to ensure that the basic requirements (2 copies of work, Complete FORM-XIV Power of Attorney, prescribed fees etc.) are complied. If an application, fails the ‘Formality Check’, a letter, for furnishing the necessary requirements, is issued to the applicant at his/her communication address.³

3.2 Waiting Period

A minimum waiting period of thirty days, effective from the date of receipt of application is mandatory, for the purpose of receiving objection(s) from the person(s) who claims or has any interest in the subject matter of copyright or disputes the rights of the applicant to application submitted for registration.⁴ If no objection to such registration is received by the Registrar of Copyrights, the application may be processed, thereafter strictly on “first come first serve” basis and the actual period may vary from time to time as per work load.

3.3 Meaning of Publication

The meaning of publication is provided under **Section 3** of the Copyright Act 1957, which states that –

For the purposes of this Act, “publication” means making a work available to the public by issue of copies or by communicating the work to the public.

The meaning of Communication to public is provided under **Section 2(ff)** of the Copyright Act, which states that –

“communication to the public” means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.

Examples of Publication of a Sound Recording (including but not limited to)

³ In such cases, the status of concerned application(s) is updated as ‘Work Awaited’ on the website of Copyright Office.

⁴ Rule 70 (9) read with Rule 70 (10).

Practice and Procedure Manual: Sound Recordings

1. Showcasing a sound recording through cable TV or Direct-to-Home (DTH) channel such as Tata Sky/Airtel TV/online audio sharing platforms etc.
2. Releasing the sound recording in market in a CD/DVD/Flash Drive or any other means of storage.

3.4 One Registration Application for one work

A separate application needs to be filed for each work and separate fee is to be paid. For example, one recorded song will be considered as one work. Multiple songs in one CD/Flash Drive will be considered as multiple works and not a single work.

3.5 Content of No Objection Certificate

There is no specific format for the No Objection Certificate. It just needs to state the following.

1. The author is the creator of the sound recording work.
2. The author is aware that a copyright registration application is being submitted in the applicant's name.
3. The author has no objection to the above.
4. The author has received full and final consideration (if any) in lieu of his services.

The original or notarized copy of a No Objection Certificate needs to be submitted to the office and it must bear the author's details and signature.

3.6 Contents of an agreement

As per Section 19, an assignment or licensing agreement should specify the following elements.

- Work
- Rights assigned
- Duration of assignment (not mandatory)
- Territorial extent of assignment (not mandatory)
- Amount of royalty/consideration payable to author or his legal heirs (if applicable)

The agreement should specify the names of all parties and should bear the signatures of all parties.

For an assignment agreement to be valid, it must be in writing and signed by the assignor or his duly authorized agent [**Section 19 (1)**].

**Practice and Procedure Manual:
Sound Recordings**

3.7 Statement of Particulars

While examining the applications for registration of sound recording or cinematograph films, apart from regular examination, the following three columns in particular need to be examined with attention.

Column 2

Column 2 specifies the name of the entity in whose name the copyright will be registered. This entity can be an individual, body corporate, or any other organization.

Column 7

Col. 7 specifies the name of author. In case of a sound recording or cinematograph film, the producer can be the author [Section 2 (d) (v)]. Therefore, the name of the producing company can appear in this column.

Note: The following possibilities have been observed in this case

(i) Original producing company is the applicant

Section 2 (d) (v) provides that **producer is the author of a sound recording work**, therefore if original producing company is the applicant, then the **name of the original producer must appear in Column 7 in such case. Agreements with/NOC from various right-holders must form part of the application.**

(ii) Applicant producing company enters into an agreement with the original producing company for distribution/publication of content

In such cases, the original producer (assignor) is another company (which may be a regional producing company) which enters into an assignment agreement with another producing company (assignee) and assigns all rights, including copyright to another producing company (assignee).

In such a case, the assignee will become the owner of copyright and can apply for copyright registration in their own name, specifying their interest as *owner* in Column 3.

However, even after assignment of ownership of copyright, the original producing company (assignor) remains the author of the work and **Column 7 should state the name of the original producer (assignor) in this case.**

The application should be accompanied with agreements between various right-holders and the original producing company as well as agreements between original producing company and the producing company to which the rights are being assigned.

Practice and Procedure Manual: Sound Recordings

(iii) An individual is the applicant and the sole creator of the work

If a person is the sole creator of a work, only their name will appear in Column 2, 7, and 11.

Column 11

In Col.11 of the SoP, names, address and nationalities of the owners of various rights comprising the copyright in the work and the extent of rights held by each, together with the particulars of assignments and license, if any need to be mentioned.

In case an agreement/NOC from various right-holders is provided and the applicant indicates their own name against this column, it is acceptable as agreement/NOC from various right-holders assigning their rights in favour of the owner are provided.

Therefore, if the applicant intends to hold all rights themselves, they can indicate that the particulars in this column are the same as particulars indicated against Column 2.

3.8 Meaning of the term “various right-holders”

Works like sound recording are made with contributions from various persons such as lyricists, music directors, composers, writers, performers, singers etc. All these persons have rights in the work to the extent of their contribution in the work.

Therefore, a no objection certificate or an assignment agreement is needed from all these persons in favour of the applicant.

3.9 Difference between author, owner, and publisher

In case of a sound recording, the producer is the author [Section 2 (d) (v)].

“Producer”, in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work [Section 2 (uu)].

Owner is the person who owns or by virtue of an agreement, is entitled to own the copyright in a work.

Publisher is the person who makes the work available to public.

(i) If the original producing company is the applicant, the same can be author/owner in the work and indicating either of the interests against column 3 is acceptable.

Practice and Procedure Manual: Sound Recordings

(ii) In case of assignment agreement between two or more producing companies, the assignee will be the owner of copyright and against column 3; the interest may be indicated as *owner*.

(iii) In case of an individual applicant who has solely created and published the work, such individual will be author, owner, and publisher (in absence of any agreement to the contrary) and author/owner as interest may be indicated against column 3.

(iv) In case of an individual applicant, if any person other than such individual has created the work, the interest of such individual in the work will be *owner* and in Column 7, details of the creator of work will appear.

In all the above cases, if publisher is different from author/owner, details of such publisher will appear in Column 9 and Column 10 (in case of subsequent publications) and an agreement or No Objection Certificate from the publisher should be provided in favour of the author/owner.

3.10 Category of work

Category will be determined on the basis of nature and definition of work.

“Sound Recording”- Any audio recording will be considered a work of sound recording. **Audio recording of a lecture/song/dance performance or any other recording consisting solely of audio devoid of any moving images or visuals will be considered an audio recording.**

4. Commonly Observed Issues

Some common issues have been observed during day-to-day examination of applications pertaining to sound recording. These issues, along with their solutions are being listed below.

1. A single CD/Flash Drive containing multiple sound recording

As per Rule 70 (2) of the Copyright Rules, 2013, every application shall be in respect of **01 work only**. There can be two possibilities if multiple sound recordings are submitted in the same flash drive/CD/DVD.

Practice and Procedure Manual: Sound Recordings

There can be two possibilities in such case.

(i). Applicant has paid separate fee for each track and filed separate applications with different diary numbers and for the sake of convenience, submitted all the tracks in a single CD/Flash Drive

In this case, it is acceptable to submit different tracks in a single CD/Flash drive and in absence of provisions/rules stating otherwise, a discrepancy should not be sent to the applicant on this basis.

(ii). Applicant has paid the fee only in respect of 01 application and filed only one application in respect of all the tracks submitted

Work means “a” sound recording [Section 2 (y)].

In view of the clear terms laid down by the very definition of work itself, **only 01 track can be registered against submission of a single application and payment of a single fee.**

In this case, a discrepancy letter may be sent to the applicant, stating that the work submitted consists of multiple videos and only one video can be registered against the present payment of fee and present diary number and instead of seeking clarification as to which particular work is to be registered among the multiple works submitted, clearly indicating the applicant vide discrepancy letter issued, to submit fresh copy of particular work to be registered.

2. Submission of Statement of Further Particulars [SoFP] with Sound Recording Work

Sometimes, applicants submit SoFP along with the application. Since SoFP is not necessary in case of sound recording, while printing the application form, SoFP is not filled and it is observed that discrepancy letters are generated and sent to the applicant on this basis. As per the format for Statement of Further Particulars (SoFP) provided by the Copyright Rules, 2013; SoFP is **only applicable for original literary/dramatic/artistic/musical works and therefore not applicable for sound recording.**

However, since the SoFP is not required in case of sound recording, a discrepancy cannot be sent to the applicant in respect of SoFP.

Practice and Procedure Manual: Sound Recordings

Therefore, in the below cases, a discrepancy should not be sent to the applicant.

- 1. Applicant has not submitted SoFP with an application for registration of sound recording.**
- 2. Applicant has submitted a print out of the SoFP but is either not filled or incomplete.**

3. Blacking out the Consideration Amount

Section 19 (3) states that **an assignment agreement must specify the amount of royalty** or other consideration payable to the author or his legal heirs. Therefore, blacking out of consideration amount is not acceptable and assignment agreements must clearly reflect the consideration amount.

4. Applicant is the sole creator of the work

In such case, an affidavit, stating that applicant is the sole creator of the work and no other person holds any rights in the work, is needed to be submitted with the application. Original/notarized copy of the affidavit needs to be submitted.

5. Mismatch of Title

In case of sound recording, the title as indicated against Col. 5 of SoP must be identical with the title appearing on the work submitted for registration. If the title appears either on the work submitted (eg. on the CD cover/CD itself) or in the sound recording, it is acceptable.

If the title does not appear anywhere at all or is completely different from the one stated on the Statement of Particulars, it gives rise to a discrepancy.

6. Sending Photocopies of Agreements

Original copies of assignment agreements/Licensing Deeds/NOCs should be sent along with the application. Alternatively, notarized copies of agreements/NOCs can also be sent.

However, there may be cases where multiple applications for registration of sound recording/cinematograph films are filed by the same applicant and the parties, consideration, and other terms of the agreements/NOCs are the same for each work. In cases like these, the same

**Practice and Procedure Manual:
Sound Recordings**

agreement is entered into by both parties and therefore, **it is acceptable if the application is accompanied by original notarized copies of agreements/NOCs.**

7. Filing of sound recording works under the category of Musical work

Musical work, by definition, means only the graphical notations depicting music [Section 2 (p)] and does not even include words or action intended to be sung, performed, or spoken with the music.

Therefore, a discrepancy will arise if an application consisting of a sound recording work is filed in the category of musical work.

8. Photographs of persons appearing on CDs or CD covers

If a CD or CD cover is imprinted with the photograph of a person, an NOC from such person is not needed if such person does not hold any rights in the work. This is because the copyright in this case is in respect of the audio/visual content and not the artistic content appearing on the CD/CD cover.

9. Language of a sound recording consisting only of instrumental music and without any words

If, in case of an instrumental sound recording, any language is specified, it may refer to the language of the lyrics/words intended to be sung along with the recording and the same is acceptable.

It is also possible that the recording is only instrumental and not intended to be sung with any words or lyrics. In such case, it is acceptable if the language of the work is specified as *NIL* and there is no need to send a discrepancy letter to the applicant in this case.

10. What details should appear in Column 12?

Filling up Column 12 is optional. In this column, names, addresses and nationalities of other persons *if any*, to whom applicant intends to authorize other persons to assign or license the rights comprising the copyrights should be indicated.

**Practice and Procedure Manual:
Sound Recordings**

Therefore, this column should indicate the details of all persons other than the persons indicated in column 11 to whom applicant intends to give the authority to assign or license the work.

11. Should NOC of persons whose details appear in Column 11 and/or Column 12 be submitted with the registration application?

Assigning/licensing the rights comprised in a work and authorizing others to do the same is a right conferred on the owner of work [Section 14].

Therefore, it is the prerogative of the owner to grant authorizations in respect of assignment or licensing of the work and **there is no need to ask for a clarification/explanation from the applicant in this regard nor is it necessary to ask the applicant to submit an NOC/agreement from the persons named in Column 11 and/or Column 12.**

12. In case of agreement/NOC from a music director, who should sign the NOC/agreement if music director works with a crew of artistes?

In many cases, music directors work with an entire crew of performers such as singers, guitarists, violinists, drum players, bass artists and so on. In such cases, music directors/directing companies enter into their own employment agreements with the artistes.

Therefore, the NOC/agreement can be signed by the music director/directing company on behalf of the artistes working for them.

13. Title of songs

Names and titles are not subject to copyright protection.