

**PRACTICE AND
PROCEDURE MANUAL
2018**



Copyright Office
Government of India

**SOUND RECORDING
WORKS**

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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.

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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.

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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).

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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)**].

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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.

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(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.

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(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.

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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.

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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

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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.

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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.