
GUIDELINES FOR EXAMINATION OF

CINEMATOGRAPH FILM WORKS

OBJECTIVE

The objective of this manual is to lay down comprehensive and definitive guidelines for examination and registration of works falling under the category of Cinematograph Film.

A separate section covers the most commonly observed issues which arise in the course of examination of cinematograph film works.

DEFINITIONS AND PROCEDURAL FORMALITIES

1. What is a Work?

A work means a cinematograph film [Section 2 (y) (ii)].

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. What is the 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. What Documents must accompany an application for Cinematograph Film?

- 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.

4. What does publication mean?

A work is considered published when it is made available to the public through communication or issue of physical copies (**Section 3**).

Communication to public means making the work available for being heard, seen, or enjoyed by the public (other than by issuing physical copies of it). The communication may be direct or by any means of display or diffusion.

The communication can be simultaneous or at individually chosen places and time.

Communication through satellite, cable, or any other means of simultaneous communication to more than one household or place of residence is deemed to be communication to the public.

Whether or not someone actually sees, hears, or enjoys the work or performance made available is immaterial when it comes to determining if the work is published or not. [Section 2 (ff)].

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. 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.

5. What is the 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.

6. Can multiple works be registered against a single diary number and single fee payment?

No. *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.

7. What should be the 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.

8. What should be the 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)**].

9. How to examine various columns in the 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

If original producing company is the applicant, then **name producer is the author of a sound recording work** as per Section 2 (d) (v).

Therefore, **name of the original producer must appear in Column 7 in this 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.

(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 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.

10. What does the term various right-holders mean?

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 favour of the applicant.

11. How to determine/ascertain the correct 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.

12. What is the difference between author, owner, and publisher?

“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.

(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.

13. Can names of films be copyrighted?

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

14. How many videos can be registered at a time?

There is no restriction on the number of works that can be registered at any given time. It is to be noted that a separate application needs to be filed for every video with separate fee.

15. 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.

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.**

In this case, a discrepancy letter can 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. The discrepancy letter should also ask the applicant to specify which video they wish to get registered against the present diary number.

Note: If applicant had earlier sent multiple works in a single CD/flash drive and upon seeking clarification, the applicant states that they wish to apply for registration in respect of one work only, then the applicant should be asked to submit a new CD/flash drive containing only that work in respect of which they seek registration. It has been observed that in some cases, the earlier CD/flash drive containing multiple works is stamped with the seal of copyright office upon registration and Col. 5 (title) is edited to state that the registration is in respect of 01 work only. This practice should not be followed and in such cases applicant must be asked to submit a fresh CD/flash drive with 01 work only.

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 cannot 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.

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, we look for the title when checking 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.

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.

11. 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 author 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 author 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.**