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# GUIDELINES FOR EXAMINATION OF SOUND

## RECORDING 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 Sound Recording.

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

### **DEFINITIONS AND PROCEDURAL FORMALITIES**

#### **1. What is a Work?**

*Work means a sound recording* [Section 2 (y) (iii)].

#### **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. What is the term of Protection for Sound Recording works?**

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. What Documents must accompany an application for Sound Recording?**

- 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 recordings, 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 Sound Recording (including but not limited to)**

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.

**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 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.

**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 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.

**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 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**

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 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.**

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

Works like sound recordings 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.

**11. How to determine/ascertain the correct 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.**

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

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

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 songs be copyrighted?**

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

**14. How many tracks 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 track/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.

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

**16. What should be the 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.

## **COMMONLY OBSERVED ISSUES**

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

### **1. A single CD/Flash Drive containing multiple sound recordings**

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.

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 can be sent to the applicant, stating that the work submitted consists of multiple tracks and only one track can be registered against the present payment of fee and present diary number. The discrepancy letter should also ask the applicant to specify which track 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 Sound Recording Work**

Sometimes, applicants submit SoFP along with the application. Since SoFP is not necessary in case of sound recordings, 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 recordings.**

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

**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 recordings, 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 or 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 recordings/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 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. 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.**