

PRACTICE AND PROCEDURE MANUAL 2018



ARTISTIC 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 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.

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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. 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—

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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 –

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(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 applicant⁶, 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.

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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.

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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).

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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

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(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.

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Column 12 (If Applicable)	Names, addresses and nationalities of other persons, if any, authorized to assign or license the rights comprising the copyright	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.
Column 13 (Mandatory)	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)	Location of the original work, including name, address and nationality of the person in possession of the work shall be indicated.
Column 14 (Mandatory if the work is capable of being used in relation to any goods or services)	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.]	Details of Search Certificate issued by the Trade Mark Registry shall be indicated.
Column 15 (Mandatory if applicable)	If the work is an “artistic work” whether it is registered under the Designs Act 2000. If yes give details.	Details with respect to Registration under Designs Act need to be indicated if necessary.
Column 16	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	Details with respect to publication of that particular design shall be indicated.

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	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.

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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

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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.

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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 subsist 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 be 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 whose portrait is used in the collage.

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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

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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.