

PRACTICE AND PROCEDURE MANUAL 2018



MUSICAL WORKS

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**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

Protection

Prerequisites

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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;

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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 Id. Mr. Franz been alive in the present time, his arrangements could easily become the subject matter of Copyright.

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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

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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

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			indicating his/her no objection to such registration, must be filed in original. If work is developed in course of employment services, a declaration regarding the same along with notarized copy of Service Agreement. 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.
		Board Resolution/ Authorization Letter (if applicable)	<i>In case of Company:</i> Board Resolution authorizing the person to sign the application on behalf of the applicant company. <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. <i>Both must be submitted in original or a duly notarized copy of the same.</i>
IV.	Copy of Work	2 Copies	Work must be submitted as Graphical Notations (Sheet Music) which may include Western, Swaras, or any other form of graphical musical notation. The work must also clearly depict the title of the work and authors name.

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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).