

THE INDIAN MUSIC INDUSTRY

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19th March, 2018

To

Mr. Hoshiar Singh

Registrar of Copyrights

Copyright Office, DIPP

Ministry of Commerce and Industry


New Delhi, India – 110075

Subject: Feedback on Guidelines for Examination of Sound Recording Works

Dear Shri Hoshiar Singh Ji:

We, IMI a.k.a. the Indian Music Industry, an affiliate of IFPI a.k.a. the International Federation of the Phonographic Industry, thank the Copyright Office for this initiative to come out with draft guidelines for the examination of copyright applications in an effort to revamp the copyright registration process. We appreciate the Copyright Board's good intention to reduce the delays in processing new applications.

Copyright registration is voluntary under the Copyright Act 1957, the purpose of which is to assist right holders to admit particulars of registered copyright as *prima facie* evidence in courts without further proof or production of the original (Section 48 of the Copyright Act). We do not object to a voluntary registration system *per se*, as long as copyright registration is not made a compulsory legal formality and is not a condition of copyright protection, but we would



Regd. Office : BF-170, Sector-1, Salt Lake City, Kolkata - 700 064.

wish to highlight the possible negative consequences that a voluntary registration system may give rise to so that the government may be careful when implementing such a system. For instance, the registration system may become *de facto* compulsory, when record companies are compelled to register all their works to avoid squatters from doing the same fraudulently. Further, the public may not appreciate the nuance that registration is not a precondition of protection, and may thus be vulnerable to the deceptive collection of "registration fees" by the unscrupulous. We recommend the Copyright Office to conduct a comprehensive review of the voluntary registration system to minimise the said negative effects, and meanwhile submit the following recommendations on the draft Guidelines for the Copyright Office to consider and adopt:

1. Some formality requirements can be simplified or reduced:

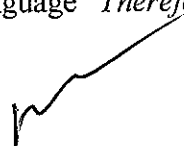
The existing procedural and formality requirements for copyright registration are very cumbersome and the draft Guidelines have not eased the burden. For example:

- a. As per point 10 of the guidelines, the filer requires a No Objection Certificate (NOC) or assignment agreement from all the contributors including the lyricists, music directors, composers, writers, performers, etc. As there are almost always multiple parties involved in the production of a sound recording, sound recording right holders are burdened to spend too many resources and time which can become counter-productive in view of its purpose.
- b. Even if the filer is the sole creator, according to Commonly Observed Issue No. 4, the person still needs to file an affidavit as proof.
- c. The burden as described in a. and b. above is aggravated when the agreements/assignments to be submitted have to be originals or notarised copies according to Commonly Observed Issue No. 6.

We suggest the Copyright Office make reference to the copyright registration mechanism in the U.S. which is relatively simpler. Sound recording right owner only needs to submit an application stating the particulars of the work (which can be done




- online), pay a fee and deposit a physical or digital copy of the work. There is no requirement of filing NOC, assignment, affidavit or any other document.
2. **Possible redaction of Confidential Information:** Commonly Observed Issue No. 3 of the Guidelines disallows redaction or 'blacking out' of the consideration amount in an assignment document submitted with the application. Although the Copyright Act requires the royalty and other consideration payable be specified in assignments, for registration purpose and considering the need of business secrecy, the Copyright Office should allow filers to submit documents on which the consideration is redacted. This is not against the Copyright Act requirement as the consideration has indeed been stated in the assignments albeit redacted in protection of the parties.
 3. For recording released prior to 2012, since the author of a sound recording is the producer according to Sec. 2(d) of the Copyright Act, therefore NOC/Assignment agreement from the sound recording producer alone (and not the others parties involved in the making of the work) suffices.
 4. Referring to point 15, instead of "on behalf of", the guideline should say "as assignee if the form." This would be in accordance with Sec 17(c) of the Copyright Act that author's employer is the first owner of the copyright unless otherwise agreed, and so it is sufficient for the music director to submit the documents.
 5. In point 9 of the Commonly Observed Issues, "...to whom author intends to authorize..." the term "author" must be replaced with "applicant".
 6. Point 4 of Definitions and Procedural Formalities titled "**What does publication mean?**", we insist that the definition of "communication to public" remains consistent with the definition provided in Sec. 3 and Sec 2 (ff) of the Copyright Act. i.e.
"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."
 7. In Point 10 of Definitions and Procedural Formalities titled "**What does the term various right-holders mean?**" we suggest that the language "*Therefore, a no objection*



certificate or an assignment agreement is needed from all these persons in favour of the applicant.” be replaced with “However, in case of a sound recording the rights holder would be the owner / author of the Sound Recording. Accordingly, the NOC / Assignment certificate would be applicable.”

On behalf of IMI, thank you for giving us the opportunity to respond to the guidelines and we look forward to continuing a mutually rewarding partnership.

Thanking You,

A handwritten signature in black ink, appearing to read 'Blaise Fernandes', with a stylized flourish at the end.

Blaise Fernandes

President and CEO,

The Indian Music Industry