



COPYRIGHT (AMENDMENTS) RULES 2019

RECOMMENDATION FROM FICCI

Existing Text Changes (omitted/ substituted)	Proposed Text (inserted)	FICCI Recommendations
<p>RULE 2 (1)</p> <p>(b) “Board” means a Copyright Board as defined in sub-section (1) of section 11</p>	<p>(b) “Board” means the Appellate Board as provided in section 11.</p>	<p>The proposed Rules seek to substitute the words “<i>a Copyright Board as defined in sub-section (1) of</i>” with “<i>the Appellate as provided in</i>” in clause (b) of sub-rule (1) of Rule 2.</p> <p>We believe that the intent is to substitute it as ‘<i>the Appellate <u>Board</u> as provided in</i>’.</p>
<p>Chapter II – THE COPYRIGHT BOARD</p>	<p>Name substituted as “THE APPELLATE BOARD”</p>	
<p>(ii) A person shall not be qualified for appointment as member unless he-</p> <p>a) is or has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years; or</p>	<p>(2) A person shall not be qualified for appointment as a Technical Member for the purposes of this Act unless he—</p> <p>(a) is or has been a member of the Indian Legal Service and has held a post in</p>	<p>FICCI welcomes the proposed amendment.</p> <p>It is further proposed that the Technical Member to be appointed to the Appellate Board should have specific expertise in</p>

<p>b) has, for at least ten years, held a judicial office; or</p> <p>(c) is or has been a Member of a Tribunal or Civil Service not below the rank of a Joint Secretary to Government of India with three years' experience in the field of Copyright; or</p> <p>(d) has, for at least ten years, been an advocate of a proven specialized experience in Copyright Law;</p>	<p>Grade I of that Service for at least three years; or</p> <p>(b) has, for at least ten years, held a judicial office; or</p> <p>(c) is or has been a member of a Tribunal or Civil Service not below the rank of a Joint Secretary to the Government of India or equivalent, with three years' experience in the field of Copyright; or</p> <p>(d) has, for at least ten years been an advocate of a proven specialized experience in Copyright law.”</p> <p>Provided that atleast one member out of the two shall have the qualification as prescribed under Clause (a),(b) or (d)</p>	<p>copyright considering the technological advancement.</p> <p>Since the Appellate Board by its very nature is a copyright specialized body, it would be helpful if the Technical Member possesses specific expertise in copyright matter in light of the fast-changing copyright environment.</p>
<p>Rule 7 Sub Rule (1)</p> <p>A copy of application under rule 6 along with the documents relied upon shall be served on the owner of the copyright by registered post.</p>	<p>A copy of application under rule 6 along with the documents relied upon shall be served on the owner of the copyright through electronic means or registered post.</p>	<p>FICCI welcomes the proposed amendment.</p> <p>However, in order to bring more clarity on the aspect of electronic means, we respectfully propose that the term “including email communication” be included in the amendment.</p> <p>Given the usual short deadlines to revert to any discrepancies and shortcoming in the copyright applications and filing appeals against orders, intimation via email is necessitated to ensure that the deadlines are met.</p>
<p>Rule 18 Sub Rule 1</p> <p>A copy of application under rule 17 shall be served by registered post on the owner of</p>	<p>A copy of application under rule 17 shall be served by registered post on the owner of copyright and if the owner of such copyright</p>	<p>FICCI welcomes the proposed amendment.</p> <p>However, in order to bring more clarity on the aspect of electronic means, we respectfully</p>

<p>copyright and if the owner of such copyright is not known or is not traceable, a copy of the application shall be served by registered post on the publisher whose name appears on the work.</p>	<p>is not known or is not traceable, a copy of the application shall be served through electronic means or by registered post on the publisher whose name appears on the work.</p>	<p>propose that the term “including email communication” be included in the amendment.</p> <p>Given the usual short deadlines to revert to any discrepancies and shortcoming in the copyright applications and filing appeals against orders, intimation via email is necessitated to ensure that the deadlines are met.</p>
<p>Rule 29 Sub Rule 3</p> <p>Separate notices shall be given for communication to the public by way of radio broadcast or television broadcast or by way of performance of a literary or musical work and sound recording which has already been published.</p>	<p>Separate notices shall be given for communication to the public for each mode of broadcast or by way of performance of a literary or musical work and sound recording which has already been published.</p>	<p>We respectfully make the following observation with regard to the amendment –</p> <ul style="list-style-type: none"> • Since there is no clear interpretation of the words “for each mode of broadcast”, it will have the potential to create multiple interpretation of “broadcast” and may include “internet-based services” • The term “broadcast” should be given a clear interpretation. This is because Section 31(D) read with Rule 29 -31 of the existing rules is used mainly for radio and television broadcasters • It is suggested that provisions of the Copyright Act, 1957 including Section 31D should also be amended so as to avoid any conflict between the Act and the Rules, and the same should be harmoniously construed. • Notably, the interpretation of internet-based services as “broadcast” would not

		<p>be correct and would be against the decision of Hon'ble Bombay High Court's decision in <i>Tips Industries vs Wynk Limited and Anr.</i> In light of the above, the proposed rule may also be considered for retraction.</p>
<p>Rule 29 Sub Rule 4 Clause b, c, g</p> <p>The words by way of radio broadcast, television broadcast wherever written have been substituted</p>	<p>The substituting words are “for each mode of broadcast”</p>	<p>Please see comments on Rule 29 Sub Rule 3</p>
<p>Rule 29 Sub Rule 4 Clause h</p> <p>Mode of the proposed communication to the public, i.e. radio, television or performance;</p>	<p>Mode of the proposed communication to the public;</p>	<p>We respectfully suggest that the statute needs to be amended for the proposed rules to take effect.</p>
<p>Rule 30 Sub Rule 1</p> <p>The words radio broadcasting and television broadcasting have been substituted</p>	<p>The words for each mode of broadcast have been included</p>	<p>Please see comments on Rule 29 Sub Rule 3</p>
<p>Rule 31 Sub Rule 1</p> <p>The words “immediately after its constitution” have been omitted</p>		<p>The omission of the words “immediately after its constitution” may not be appropriate. It is suggested that there should be a timeline within which the board is required to determine royalties</p> <p><u>Alternative Suggestion</u></p> <p>The words ‘give public notice of its intention to fix royalties’ should be amended to read ‘shall, within 30 days of the receipt of a request, give public notice...’. Although Rule 31(5) indicates how long the process should take once it’s begun, there would be no time</p>

<p>The words “radio broadcasting and television broadcasting” have been substituted</p>	<p>The words for each mode of broadcast have been included</p>	<p>limit within which to begin if the proposed amendment were made as is.</p> <p>With respect to inclusion of “for each mode of broadcast”, please see comments on Rule 29 Sub Rule 3</p>
<p>Rule 31 Sub Rule (5) The words “radio and television broadcasting respectively”, shall be substituted.</p>	<p>The words “each mode of broadcast” have been included.</p>	<p>Please see comments on Rule 29 Sub Rule 3</p>
<p>Rule 31 Sub Rule (6) The words “radio and television broadcast”, have be substituted</p>	<p>The words “each mode of broadcast” have been included.</p>	<p>Please see comments on Rule 29 Sub Rule 3</p>
<p>Rule 31 Sub Rule (7) clause (e) The words “the terms and conditions included in the Grant of Permission Agreement (GOPA) between Ministry of Information and Broadcasting and the broadcaster for Operating Frequency Modulation (FM) Radio Broadcasting Service; and” have been substituted.</p>	<p>The words “the terms and conditions specified in grant of permission by the relevant authority; and” have been included.</p>	<p>We suggest that the term “relevant authority” is rather ambiguous and requires a clear interpretation.</p>
<p>Rule 39 Sub Rule (1) A copy of such application shall be served by registered post on the owner of copyright.</p>	<p>A copy of such application shall be served through electronic means or by registered post on the owner of copyright.</p>	<p>Please see comments on Rule 18 Sub Rule 1</p>

<p>Rule 49 sub rule (1)</p> <p>The words “within a period of sixty days from the date of its receipt by the Registrar of Copyrights” have been omitted</p>		<p>It is suggested that the words “<i>within a period of sixty days from the date of its receipt by the Registrar of Copyrights</i>” should not have been omitted and should be brought back</p>
<p>Rule 50 sub rule (3) have been omitted</p>		<p>It is suggested that the words “<i>Rule 50 Sub Rule 3</i>” should not have been omitted and should be brought back as an administrator with experience in administration or accounting of copyright matter is crucial to adequately serve the purpose.</p>
<p>Rule 56 sub rule (1)</p> <p>As soon as may be, but in no case later than three months from the date on which a copyright society has become entitled to commence its copyright business, it shall frame a scheme of tariff</p>	<p>As soon as may be, but in no case later than three months from the date on which a copyright society has become entitled to commence its copyright business, it shall frame and publish a scheme of tariff</p>	
<p>Rule 56 sub-rule (4)</p> <p>The words “and may” have been omitted;</p>	<p>After the words “consult the user groups” the following words have been inserted –</p> <p>“and may also consider:</p> <p>(a) cross-sectional tariff comparisons;</p> <p>(b) economic research;</p> <p>(c) the nature and scope of the use of the work;</p> <p>(d) the commercial value of the rights in use;</p> <p>(e) the benefits to licensees;”</p>	<p>FICCI welcomes the proposed amendment.</p> <p>However, we suggest that the words “may also” should be replaced with “shall”</p> <p>Further, it is respectfully suggested that the terms “cross-sectional tariff comparisons” and “the benefits to licensees” should be clearly interpreted</p> <p>Also, the terms “economic research” should be replaced with “explicit economic research” as prescribed by The Collective Management of Copyright (EU Directive) Regulations 2016</p>
<p>Rule 58 Sub Rule 10</p>	<p>The following sub-rules shall be inserted –</p>	

	<p>“(11) A copyright society must ensure that where the royalty cannot be distributed within the time specified in sub-rule (8) as the relevant author or other owner could not be identified or located, such royalties are kept separate in the accounts of the copyright society;</p> <p>(12) A copyright society must take all necessary measures to identify and locate the authors and other owners and must publish on its website, at the end of every quarter, the following information:</p> <p>(a) the title of the work;</p> <p>(b) the name of the author and other right owners of the work, as available; and</p> <p>(c) any other relevant information available which could assist in identifying the right holder.</p> <p>(13) In case the royalty due to author and other owners remains undistributed at the end of the period of three years from the end of the financial year in which collection of the royalty occurred, the copyright society shall refund such amount to the licensee within a period of three months from the end of such financial year;</p> <p>Nothing in this sub-rule shall prejudice the right of an author and other owner to claim such amounts from the copyright society or the licensee, as the case may be, in accordance with the limitation period applicable to such civil proceedings.”</p>	<p>It is suggested that the proposed Sub Rule 13 would require licensees to carry the liability of undistributed royalties (as refunded by the society) which could be an additional burden on their books.</p> <p>It is proposed that the refunded amount should be deposited into separate (like and escrow account)</p> <p>Further, the terms “or the licensee” should be removed since once the royalties have been paid by licensee to society, he/she should be absolved from royalties.</p>
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<p>Rule 59 Sub Rule (7) has been substituted</p>	<p>(7) The Chairman and other members, of the Governing Council shall be elected for a term of two years, and shall be eligible for re-election.</p>	<p>It is suggested that the words “Rule 59 Sub Rule (7)” should not have been omitted and should be brought back as the existing rule well serves the purpose.</p>
<p>Rule 61 sub rule (5) Every member of the society shall have equal voting rights in General Body meetings</p>	<p>61. Meetings of the Society. (5) Every member of the society shall have the right to participate in and to exercise voting rights at the General Body Meeting in a manner determined and applied in a fair and proportionate manner on the basis of one or more of the following criteria;</p> <ul style="list-style-type: none"> (a) number of works and rights or set of rights authorized by the owner; (b) duration of the membership; (c) amounts received or due to a member. 	<p>We suggest the modification of the rule in a manner that serves all the relevant stakeholders</p>
<p>Rule 64</p>	<p>Rule 64, after the words “maintain the following registers” the words “in physical or digital format,” have been inserted.</p>	<p>FICCI suggests the inclusion of the words “in physical or digital format or both”</p>
<p>Rule 70 sub rule (5) the words “the source and object code”, have been substituted</p>	<p>the words “at least first 10 and last 10 pages of source code, or the entire source code if less than 20 pages, with no blocked out or redacted portions” have been inserted</p>	<p>We respectfully suggest that proposed language to be inserted should be “at least the first 10 lines and last 10 lines of source” This is because the source code forms a part of a computer program U/S.2 (ffc) of the Copyright Act and should be protected as an intellectual property under law.</p>

<p>Rule 82 Complete rule has been substituted.</p>	<p>“Mode of Communication by the Copyright Office, etc.— Every written intimation from the Board, the Copyright Office or the Registrar of Copyrights shall be deemed to have been duly communicated to any person if such intimation is sent to the known address of such person through electronic means or by registered post”</p> <p>has been inserted</p>	<p>While FICCI welcomes the amendment, we respectfully suggest the below amendment –</p> <p><i>“known address of such person through electronic means <u>including electronic mail or by registered post</u>”.</i></p>
<p>First Schedule, in FORMS II, III, V, VI and VII</p> <ul style="list-style-type: none"> • the words and punctuation “Registrar of Copyrights/” occur, the same have been omitted. • wherever the words “Copyright Board” have been substituted, • the words “Copyright Office” have been omitted. • In the First Schedule, in Form XIV, for the words "the Copyright Rules, 2012" have been substituted. 	<ul style="list-style-type: none"> • the words “Appellate Board” have been inserted. <p>the words, "the Copyright Rules, 2013", have been inserted.</p>	
<p>Second Schedule, serial number 9 clause(b) the word “Literary or” has been omitted.</p>	<p>After the word “goods”, the words “or services” shall be inserted.</p>	

<p>Second Schedule, serial number 10 clause(b)</p> <p>the word “Literary or” has been omitted.</p>	<p>After the word “goods”, the words “or services” shall be inserted.</p>	
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*** In addition to the aforesaid amendments, we urge the Ministry to propose an amendment to Rule 75 sub-rule (3) (Chapter XIV)**

The success of newly released content (film/sporting/series) is highly dependent on the opening timeframe (e.g. release weekend) and the existing Rule 75 sub-rule (3) in Chapter XIV does not take into consideration the speed of distribution of illegitimate content online, once the said content is infringed. Therefore, we urge the Ministry to consider an amendment to the aforesaid rule in the proposed 2019 amendments to the copyright rules which will allow copyright holders to limit the momentum of distribution of such infringing content.