

MODULE 4

Copyrights and Related Rights & Trademarks

Syllabus

Copyrights and Related Rights: Classes of Copyrights. Criteria for Copyright. Ownership of Copyright. Copyrights of the Author. Copyright Infringements. Copyright Infringement is a Criminal Offence. Copyright Infringement is a Cognizable Offence. Fair Use Doctrine. Copyrights and Internet. Non-Copyright Work. Copyright Registration. Judicial Powers of the Registrar of Copyrights. Fee Structure. Copyright Symbol. Validity of Copyright. Copyright Profile of India. Copyright and the word 'Publish'. Transfer of Copyrights to a Publisher. Copyrights and the Word 'Adaptation'. Copyrights and the Word 'Indian Work'. Joint Authorship. Copyright Society. Copyright Board. Copyright Enforcement Advisory Council (CEAC). International Copyright Agreements, Conventions and Treaties. Interesting Copyrights Cases.

Trademarks: Eligibility Criteria. Who Can Apply for a Trademark. Acts and Laws. Designation of Trademark Symbols. Classification of Trademarks. Registration of a Trademark is Not Compulsory. Validity of Trademark. Types of Trademark Registered in India. Trademark Registry. Process for Trademarks Registration. Prior Art Search. Famous Case Law: Coca-Cola Company vs. Bisleri International Pvt. Ltd.

Copyrights and Related Rights: (Governed by the Copyright Act, 1957 of India)

- **Definition:** Copyright's refer to the legal rights provided by law to the original creator of the work in the fields of literature and computer software.
- The **Related Rights** 'encompass the author's work in the fields of dramatics, sound recording, film/video recordings, paintings, architecture, etc.
- This Act provides rights of reproduction, communication to the masses, adaptation and translation of the work.
- The words author and work need to be understood from the perspective of Copyrights. The term '**author**' refers to an individual who develops the content (of work). The author can be a writer (literary work), computer programmer (software), composer (musical work), producer (cinema films, sound recording), photographer (photos). The term '**work**' is a task undertaken in the fields of literature, dramas, music, artistic, cinematograph film and sound recording.

Classes of Copyrights

In India, following classes of Copyrights exist:

- **Literature:** Books, Essays, Research articles, Oral speeches, Lectures, Compilations, Computer programme, Software, Databases.
- **Dramatics:** Screenplays, Dramas.
- **Sound Recordings:** Recording of sounds regardless of the medium on which such recording is made e.g. a Phonogram and a CD-ROM.
- **Artistic:** Drawing, Painting, Logo, Map, Chart, Photographs, Work of Architecture, Engravings, and Craftsmanship.
- **Musical:** Musical notations, excluding any words or any action intended to be sung, spoken or performed with the music. A musical work need not be written down to enjoy Copyright protection.
- **Cinematograph Films:** Cinematograph Film is a visual recording performed by any medium, formed through a process and includes a sound recording. For example, Motion Pictures, TV Programmes, Visual Recording, Sound Recording, etc

Criteria for Copyright

- A work must exist in some **physical (or tangible)** form (duration may vary from short period to many years).
- The work has to be **original** i.e. the author created it from independent thinking void of duplication. This type of work is termed as an **Original Work of Authorship** (OWA).
- Copyright protection also requires at least some creative effort on the part of the author. There is no minimum limit for the extent of **creativity**.
- As an example, mere changing the dimensions of a book will not be granted Copyright protection. Similarly, an address book of alphabetically arranged telephone numbers does not

qualify for Copyright protection as it involves a straightforward alphabetical listing of phone numbers rather than a creative selection of listings.

Ownership of Copyright

- The person who created the work is considered as the first (original) holder (owner) of the Copyright.
- In case the author is an employee and has been contracted to do the work by a proprietor (of the company/firm/society /organization, etc.), the owner of the Copyright shall be the proprietor.
- The government will be the primary owner of the government work in the absence of any kind of arrangement.
- The person delivering a speech is the first owner of the Copyright.

To obtain permission to use copyrighted material, a request for the same should be made to the legal owner (of the copyrighted material), which could be the original author, the legal heir (in case of the death of the author), publisher, etc.

The request must mention the following:

- Title, author and/or editor, and edition.
- Precise material to be used.
- The number of copies.
- The purpose of the material e.g. educational, research, etc.
- Form of distribution e.g. hard copy to classroom, posted on the internet.
- Whether the material is to be sold e.g. as part of a course pack.

COPYRIGHTS OF THE AUTHOR

Copyrights provide exclusive rights to the author in the areas of publication, distribution, and usage.

- A Copyright owner enjoys two types of rights i.e.
a) Economic Rights (or Proprietary Rights): Economic Rights are associated with financial benefits accruing from the sale of copyrights. As per the Act, Copyright owners can authorize or prohibit:

- Reproduction of the work in any form, including printed publications or sound recordings.
- Distribution of copies of the work.
- Public performance of the work.
- Broadcasting/communicating the work to the public
- Translating the work into other languages.
- Adaptation of the work, such as converting a novel into a screenplay.

b) Moral Rights (or Personal Rights):

- It includes **Right of Paternity and Right of Integrity**
- **The Right of Paternity** - even if the Copyright has been licensed to another party, the original author of the work retains the right to claim authorship i.e. the name of the author/s will remain

even though Copyrights have been transferred to another party e.g. a book publisher.

- **The Right of Integrity**- the original author has the right to prevent misuse of the work e.g. alterations/additions/ deletions in work resulting in misrepresentation of the said work or harming the honor and reputation of the author.
- It is pertinent to mention that for a work, there can be more than one rights holder, for instance, a musical sound recording has many rights holders, such as the lyricist, music composer, singer, musicians and sound recorders.

COPYRIGHT INFRINGEMENTS

As per the Copyrights Acts, 1957, the following acts are regarded as an infringement of Copyrights:

- Making copies for sale or hire or selling or letting them for hire without permission.
- Distributing infringing copies for trade or to such an extent to affect the interest of the owner of the Copyright prejudicially.
- Public exhibition of infringing copies for trade purposes.
- Importation of infringing copies.
- Translating a work without the permission of the owner.

Copyright Infringement is a Criminal Offence :According to Section 63 of the Copyright Act, 1957, if any person knowingly infringes the Copyright, he qualifies for the criminal offence. The punishment awarded for the infringement (of Copyright) is imprisonment for six months with the minimum fine of ₹ 50,000/-. In case of a second and subsequent conviction, the minimum punishment is imprisonment for one year and a fine of ₹ 1,00,000. There is a dedicated IP division to deal with Copyright cases. Also, there is a Copyright Board constituted by the Central Government in 1958 to adjudicate certain claims about Copyright.

Copyright Infringement is a Cognizable Offence: A police officer (rank of a sub-inspector or higher) can confiscate the infringed Copyright material without issuing a warrant and produce the same in the court of law.

Fair Use Doctrine

Any person not possessing a valid license from the owner of the Copyright is not entitled to exploit the said work. However, Section 52 of the Copyright Act, 1957, provides for certain exceptions to the infringement of Copyright. As per the rule of law, Copyrighted materials cannot be used by anybody without the proper consent of the legal owners (of the Copyright). However, limited use of Copyrighted materials for teaching and research purposes is legally permitted, under The Fair Use Doctrine, which comprises of the four-part test:

- **The character of the use** - use of the work is purely educational, non-profit and personal
- **Nature of the work** - The use of work is factual in nature and not imaginative.
- **Amount of the portion to be used** - permission is not needed if only a small portion of Copyright protected material is to be used. However, this parameter is debatable now.
- **Impact of use on the value of the Copyrighted material** - If a small portion of the work is copied and is not affecting the author's economic and moral rights, it will be excused from the infringement. Detailed information on the examples of the Fair Use Doctrine can be accessed from the official website (<http://copyright.gov.in/exceptions.aspx>).

A few examples are listed below:

- If the Copyrighted work is used for personal use i.e. studies or research.
- Quotation mentioned in the Copyrighted work.
- Reporting of current events in the media, such as newspapers, magazines or radios/television.
- Reproduction of the work by teachers or scientific researchers.
- Performance is free of charge by government officials in the performance of their duties e.g. reproduction of any work for a judicial proceeding or a report of a judicial proceeding.
- Use of any work prepared by the Secretariat of a Legislature.
- Use of the work in a certified copy made or supplied in accordance with any law for the time being in force.
- Making three or less than three copies of a book (including a pamphlet, sheet of music, map, chart or plan).
- Bonafide religious ceremony, including a marriage function

COPYRIGHTS AND INTERNET

- The twenty-first century is an era of digitization. The Copyrighted data is quickly transmitted via the internet.
- This method of data transmission has brought amendments to the existing Copyright laws.
- One should be careful of Copyright/fair use principles when downloading material from the internet.
- In general, posting material on the internet by the Copyright owner gives an internet user the right to use that material for his personal use, but he cannot use the work for commercial purposes.
- Electronic distribution of a Copyrighted work should mention the statement that —*This work is protected by Copyright laws and is provided for educational instruction only. Any infringing use may be subject to disciplinary action and/or civil or criminal liability as provided by law*”.

NON-COPYRIGHT WORK

- The ideas, concepts, and principles themselves cannot be protected under copyright, only the form in which they are expressed can be copyrighted.
- Facts, such as scientific or historical discoveries, are not copyright protected.
 - For example: an author of a book on “Buddhism” takes ten-fifteen years to gather all the necessary materials and information for his work. At a great expense, the author travels to various museums, libraries and excavations sites. However, after the book is published, anyone is free to use the underlying facts, provided they express the information on their own.
- Copyright does not protect titles, names, slogans, short phrases, short word combinations, methods, or factual information.
- Certificates are not considered as Copyrightable subject matter as there is not much scope

for creativity.

- The Copyright registration for a website, as a whole, is not possible. However, different components/rudiments of a website can be granted Copyright registration
 - For example: computer programmes/software, compilations including computer databases (literary works'); photographs, paintings, diagram, map, chart or plan (artistic works'); and works consisting of music including graphical notation of such work (musical works').
- If someone swipes your picture/song/video from the internet and uses it for their purposes, it is a Copyright infringement. By the way - the same is true if *you* nick some else's material for your purposes.

COPYRIGHT REGISTRATION

- In other words, there is no formal request to be submitted to the office of the Copyright, for acquiring Copyright. Copyright registration does not confer any rights.
- The certificate of registration serves as *prima facie* evidence in a court in cases of disputes relating to ownership or creation of Copyright, financial matters, transfer of rights, etc.
- It is advisable that the author of the work registers for Copyright for better legal protection. In India, Copyrights matters, including Copyright registration, are administered under the Copyright Act, 1957 and Copyrights Rule, 2013.
- Below mentioned website gives prominent forms for copyright registration (<https://copyright.gov.in/>).

FORM – XIV

Application for Registration of Copyright

To

The Registrar of Copyrights,
Copyright Office,
BoudhikSampada Bhawan, Plot No. 32,
Sector 14, Dwarka, New Delhi-110078
Phone: 011-28032496

Sir,

In accordance with section 45 of the Copyright Act, 1957 (14 of 1957), I hereby apply for registration of Copyright and request that entries may be made in the Register of Copyrights as in the enclosed statement of Particulars' sent herewith.

I also send herewith duly completed the statement of further particulars relating to the work.

In accordance with rule 70 of the Copyright Rules, 2012, I have sent by pre-paid registered post copies of this letter and of the enclosed statement(s) to the other parties concerned, as shown below:

| Names and addresses of the parties | Date of Dispatch |
|------------------------------------|------------------|
| 1 | 2 |

The prescribed fee has been paid, as per details below:

Communications on this subject may be addressed to:

I hereby declare that to the best of my knowledge and belief, no person, other than to whom a notice has been sent as per paragraph 2 above has any claim or interest or dispute to my Copyright of this work or to its use by me.

I hereby verify that the particulars given in this Form and the Statement of Particulars and Statement of Further Particulars are true to the best of my knowledge, belief and information and nothing has been concealed therefrom.

List of enclosures:

Yours faithfully

(Signature of the Applicant)

Place:

Date:

Source: <https://copyright.gov.in/frmDownloadPage.aspx>

STATEMENT OF PARTICULARS

| S.No. | Attributes | Details |
|-------|---|---------|
| 1. | Registration number (To be filled in the Copyright Office) | |
| 2. | Name, phone, email, address and nationality of the applicant | |
| 3. | Nature of the applicant's interest in the Copyright of the work | |
| 4. | Class and description of the work | |
| 5. | Title of the work | |
| 6. | Language of the work | |
| 7. | Name, address and nationality of the author and, if the author is deceased, the date of his decease | |
| 8. | Whether work is published or unpublished | |
| 9. | Year and country of first publication and name, address and nationality of the publishers | |
| 10. | Years and countries of subsequent publications, if any, and names, addresses and nationalities of the publisher | |
| 11. | 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 | |
| 12. | Names, addresses and nationalities of other persons, if any, authorized to assign or license the rights comprising the Copyright | |
| 13. | 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) | |
| 14. | 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.] | |

| | | |
|---|---|--|
| 15. | If the work is an "artistic work" whether it is registered under the Designs Act 2000. If yes give details. | |
| 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 through an industrial process and , if yes, the number of times it is reproduced. | |
| 17. | Remarks, if any | |
| Place:(Signature of the Applicant) | | |
| Date: | | |
| Source: https://copyright.gov.in/frmDownloadPage.aspx | | |

JUDICIAL POWERS OF THE REGISTRAR OF COPYRIGHTS

- Summoning and enforcing the attendance of any person and examining him on oath.
- Requiring the discovery and production of any document.
- Receiving evidence on affidavit.
- Issuing commissions for the examination of witnesses or documents.
- Requisitioning any public record or copy thereof from any court or office.
- Any other matters which may be prescribed.

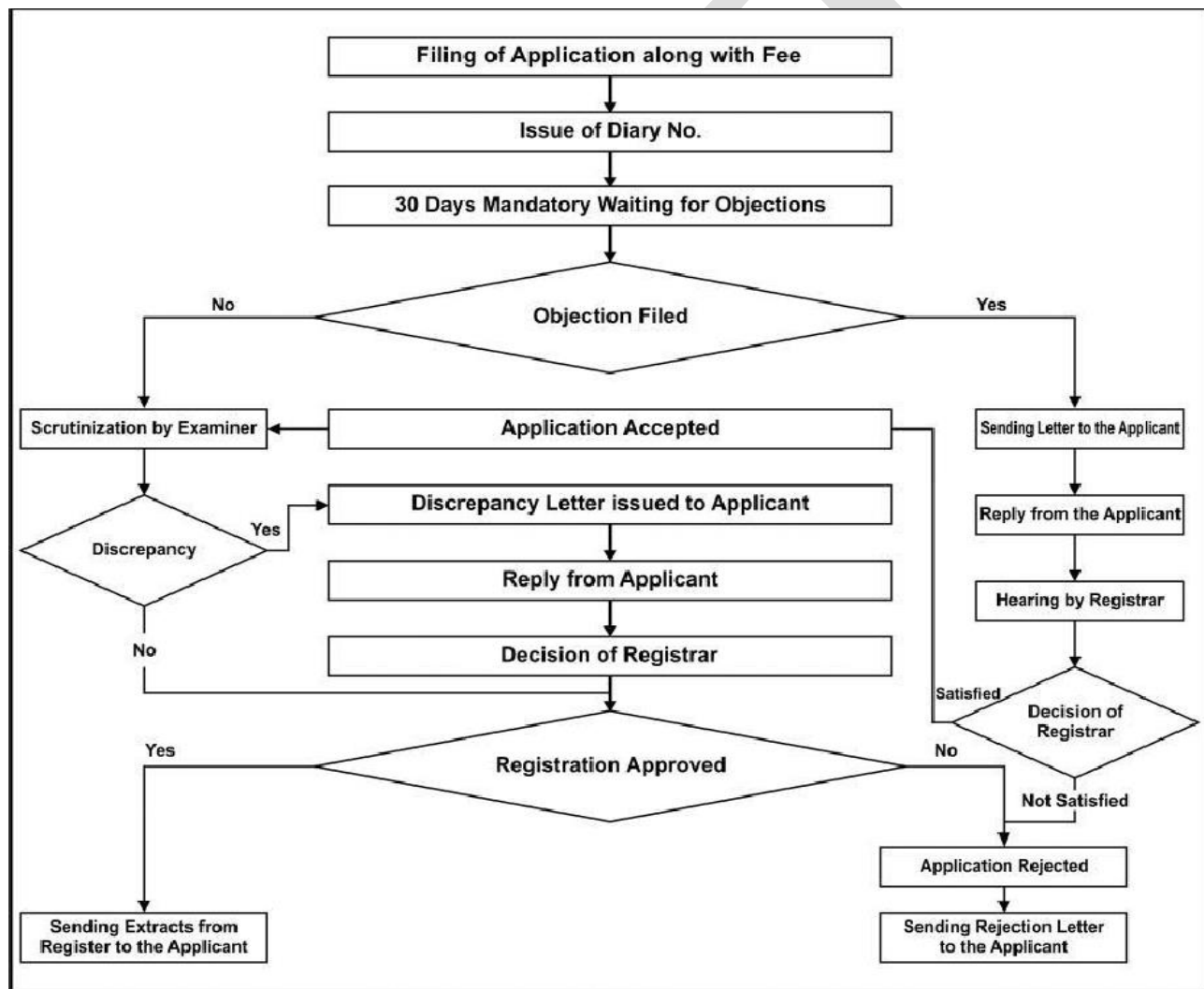


Fig shows : Flow chart for the process of Copyright registration

Table: Important forms pertaining to Copyrights

| S. No. | Name of Form | Form No. |
|--------|--|-----------|
| 1. | Application form for registration of Copyright | Form-XIV |
| 2. | Application form for registration of changes in particulars of Copyright | Form-XV |
| 3. | Registration of a Copyright Society | Form-VIII |
| 4. | Application form for the relinquishment of Copyright | Form-I |

Source: <http://Copyright.gov.in/frmformsDownload.aspx>

Fee Structure For each work, a separate application form needs to be submitted, along with the requisite fee. The fee is not reimbursable in case the application for registration is rejected.

| Attribute | Fee (₹) | | |
|--|----------------|--|---------|
| For an application for registration or Copyright Literary, Dramatic, Musical or Artistic work | 500/- per work | | |
| For an application for registration of Copyright in a Cinematograph Film | 5,000/- | | |
| For an application for registration of Copyright in a Sound Recording | 2,000/- | For an application for registration of change in particulars of Copyright entered in the Register of Copyrights in respect of Cinematograph Film | 2,000/- |
| Provided that in respect of a Literary or Artistic work which is used or is capable of being used in relation to any goods or services | 2,000/- | For an application for registration of changes in particulars of Copyright entered in the Register of Copyrights in respect of Sound Recording | 1,000/- |
| Making any change in Literary, Dramatic, Musical or Artistic work | 200/- | For an application for prevention of importation of infringing copies per place of entry | 1,200/- |
| Provided that in respect of a Literary or Artistic work which is used or is capable of being used in relation to any goods or services | 1,000/- | | |

Source: <http://Copyright.gov.in/frmFeeDetailsShow.aspx>

COPYRIGHT SYMBOL

The important things which may be mentioned as a Copyright mark on Copyright creation are:

- The Copyright symbol © (**the letter C in a circle**), or the word. Copyright, or the abbreviation Copr.
- In the case of compilations or derivative works incorporating previously published material, the year with the date of the first publication of the compilation or derivative work should be mentioned. The year date may be omitted for pictorial, graphic, sculptural work, greeting cards, postcards, stationery, jewellery, dolls and toys.
- The name or the abbreviation by which the name can be recognized of the owner of the Copyright, or a generally known alternative designation of the owner can be mentioned.
- The elements for sound recordings generally require the same three elements, except the symbol is ® (the letter P in a circle) instead.

VALIDITY OF COPYRIGHT

- In general, the validity of Copyright is for **60 years**.
- This period starts either from the year after the death of the author (in case of literature, dramatic, musical and artistic works) or from the date of publication of the work (in case of cinematograph films, sound recordings, photographs, posthumous publications, works of government and works of international organisations).

COPYRIGHT PROFILE OF INDIA

- A comparative five years (2015-20) study revealed a gradual increase in the number Copyright applications in the first four years of the study, with a maximum number of applications (21,905) recorded in the 2019-20 period (Fig. 2.7). The number of applications examined was maximum (34,388) in 2017-18.
- However, it tapered down to 22,658 in 2018-19 and 19,460 in 2019- 20. A similar trend was observed in the number of Copyright registrations, with a peak (19,997) observed in 2017-18.

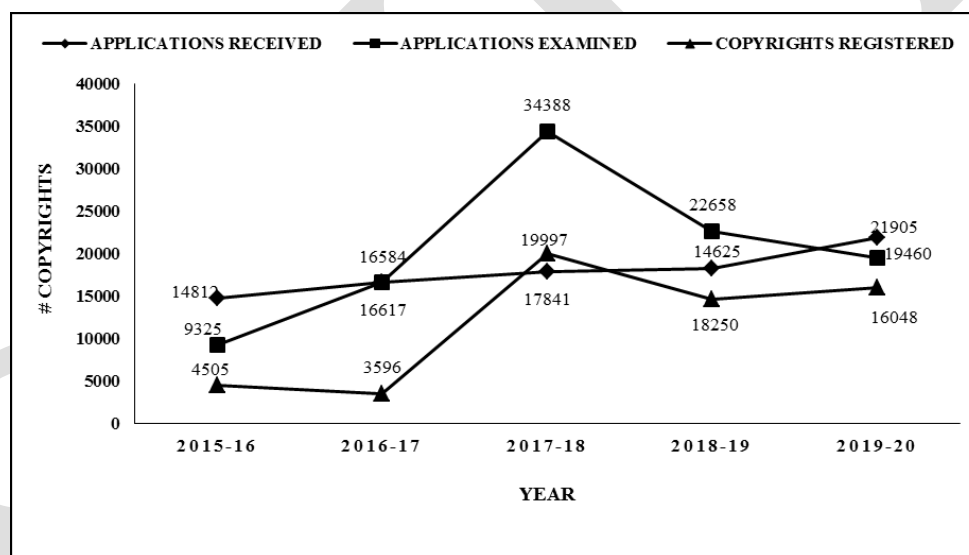


Fig. 2.7: Copyrights profile (India) for the period 2015-20.

COPYRIGHT AND THE WORD ‘PUBLISH’

- **PUBLISH:** A work is considered published when it is in the public domain on an unrestricted basis.
 - For example, a person writes an article called 'Life in Himalayas' and distributes it to a few individuals and/or societies/organizations with a restriction *not to disclose* the contents of the article. 'Life in Himalayas' has not been —published. in the Copyright sense.
 - If the author removes the condition of nondisclosure or posts of this article on the

internet (i.e. public domain), it would be considered as published.

- NOTE: Sometimes both published and unpublished works can be registered under Copyright

TRANSFER OF COPYRIGHTS TO A PUBLISHER

- The original authors of the Copyrighted work may not have the ability to widely publicise their work. Usually, they transfer their rights to publishers for financial benefits, which could be a one- time lump sum amount or royalties or a combination of the two.
- However, transferring Copyrights unconditionally to the publishers (or anybody else) may have some repercussions for the owner of the Copyright. A publisher may prevent author/s from displaying their articles on the institute's websites.
- The new owner of Copyright may not even allow the author to revise his work. In other instances, a publisher might print an insufficient number of hard copies and also does not show interest in uploading the soft copy of the work on the internet.
- Hence, one must be careful in signing an agreement with the publishers. The author may not transfer all the legal rights bestowed upon him as an author. An agreement may be signed permitting only the print and sale of hard copies by the publishers
- Before the digital era, authors used to rely completely on publishers for the dissemination of their work. However, in the internet era, the dependency on publishers has almost diminished.
- The author is in a position to bypass the publishers and bring his work in to the public domain. But this freedom cannot be enjoyed by those who are already under the publishing contract.
- Even though the author has completely and exclusively licensed out his work, the Copyright Act has a provision under '**termination of transfer**' to reclaim his Copyright.
- Under this provision, certain Copyright agreements can be terminated after 35 years of the agreement. This statutory termination right applies even though it is not incorporated in the agreement. It is strongly advised that authors must apply their mind while signing the Copyright agreement.

COPYRIGHTS AND THE WORD 'ADAPTATION'

In the world of Copyright, the word 'Adaptation' signifies the creation of a similar work based upon contemporary work.

The Copyright Act defines the following actions as adaptations:

- Transformation of a dramatic work into a non-dramatic work.
- Changing a literary or artistic work into a drama.
- Re-arrangement of a literary or dramatic work.
- Depiction through pictures of a literary or dramatic work.
- The making of a cinematograph film of a literary or dramatic or musical work.

COPYRIGHTS AND THE WORD 'INDIAN WORK'

Indian work' means a literary, dramatic or musical work provided

- The author of the work is an Indian citizen.
- The work is first published in India.
- In the case of an unpublished work, at the time of the making of the work, the author of the work was a citizen of India.

JOINT AUTHORSHIP

'Work of Joint Authorship' means 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.

COPYRIGHT SOCIETY

Many a time, authors and other owners of Copyrights are either unable or lose track of all the uses of their work, including the collection of royalties, infringement issues, etc. To overcome these hurdles, Copyright Societies have cropped up.

A Copyright Society can be formed by a group of seven or more copyright holders. The term of registration of a Copyright Society is for five years.

Functions of Societies:

- Keep track of all the rights and infringements related to their clients.
- Issue licences in respect of the rights administered by the society.
- Collect fees in pursuance of such licences.
- Distribute such fees among owners of Copyright after making deductions for the administrative expenses.

The registered Copyright Societies in India are:

- Society for Copyright Regulation of Indian Producers for Film and Television (**SCRIPT**) Continental Building, Dr. A.B. Road, Worli, Mumbai 400 018, (for cinematograph and television films).
- The Indian Performing Right Society Limited (**IPRSL**), 208, Golden Chambers, 2nd Floor, New Andheri Link Road, Andheri (W), Mumbai- 400 058 (for musical works).
- Phonographic Performance Limited (**PPL**) Flame Proof Equipment Building, B.39, Off New Link Road, Andheri (West), Mumbai 400 053 (for sound recordings).

COPYRIGHT Board

The Copyright Board is a regulatory body constituted by the government, to perform judicial functions as per the Copyright Act of India. The Board comprises of a Chairman and members (2-14) to arbitrate on Copyright cases. The Chairman of the Board is of the level of a judge of a High Court.

The Board has the power to:

- Hear appeals against the orders of the Registrar of Copyrights.
- Hear applications for rectification of entries in the Register of Copyrights.
- Adjudicate upon disputes on the assignment of Copyrights.
- Grant compulsory licences to publish or republish works (in certain circumstances).
- Grant compulsory licence to produce and publish a translation of a literary or dramatic work in any language after seven years from the first publication of the work.
- Hear and decide disputes as to whether a work has been published or about the date of publication or the term of Copyright of a work in another country.
- Fix rates of royalties in respect of sound recordings under the cover-version provision.
- Fix the resale share right in original copies of a painting, a sculpture or a drawing and original manuscripts of a literary or dramatic or musical work.

COPYRIGHT ENFORCEMENT ADVISORY COUNCIL (CEAC)

- In 1991, the Government set up a CEAC to review the progress of enforcement of the Copyright Act periodically and advise the Government regarding measures for improving the enforcement of the Act.
- The term of the CEAC is three years. The CEAC is reconstituted periodically after the expiry of the term.

INTERNATIONAL COPYRIGHT AGREEMENTS, CONVENTIONS AND TREATIES

- Laws are valid only in the country in which they have been created.
- To secure protection to Indian works in foreign countries, the author needs to apply separately to each country or through dedicated international Conventions on Copyright and Neighbouring (related)
- Rights, provided a country is a member of such Conventions. India is a member of the following Conventions:
 1. Berne Convention for the Protection of Literary and Artistic Works, 1886.(<https://www.wipo.int/treaties/en/ip/berne/>).
 2. Universal Copyright Convention, 1952.
(<http://www.unesco.org/new/en/culture/themes/creativity/creative-industries/copyright/universal-copyright-convention/>).
 3. Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961. (<https://www.wipo.int/treaties/en/ip/rome/>).
 4. Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties, 1979. (<https://treaties.un.org/doc/Treaties/1979/12/19791213%2009>)
 5. Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, 1995. (https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm).
 6. In India, Copyrights of foreign authors, whose countries are members of the Berne Convention for the Protection of Literary and Artistic Works (1888), Universal Copyright Convention

(1952) and the TRIPS Agreement (1995) are protected through the International Copyright Order.

INTERESTING COPYRIGHTS CASES

David vs. Macaques, Indonesia, 2011 –

In 2011, a UK-based photographer David Slater put his camera on a tripod in the wildlife sanctuary to click the photograph of Macaques monkeys. The Macaques were very curious about the equipment and they found the flashlight fascinating. One monkey clicked a selfie photograph which became very famous and legally controversial on the matter of Copyright. Theoretically, the monkey is the holder of Copyright as he clicked the photo. Practically, David Slater was the claimant of the Copyright. The dispute entered judicial quarters between People for the Ethical Treatment of Animals (PETA) and David Slater. Now, the settlement has been concluded. The photographer i.e. David Slater withholds the Copyright of the picture for having a substantial contribution, but he would pay 25% of the royalty share to the wildlife sanctuary where the monkey lives (https://www.wipo.int/wipo_magazine/en/2018/01/article_0007.html).

'Happy birthday to you' case law –

According to the Guinness World Records, 1998, it is the most recognized song in the English language. The melody of 'Happy Birthday to You' originates from the song 'Good Morning to All', which has traditionally been attributed to American Sisters, namely Patty Smith Hill and Mildred J. Hill, in 1893. The sisters composed the melody of 'Good Morning to All' to make it more interesting for the children. In 1935, Summy Company registered the Copyright on the Piano Setting on the Song. In 1999 Warner/Chappell acquired the company and started taking royalty for the happy birthday song and earned a huge amount. After mediation by the Federal court, Warner Music, through its publishing subsidiary Warner/Chappell, agreed to pay the settlement to a class of thousands of people and entities who had paid licensing fees to use the song since 1949 because only the melody was registered and not the lyrics. Now the song is in the public domain.

Amitabh Bachchan to lose Copyrights over his father's works in 2063 –

Father of renowned actor Mr. Amitabh Bachchan, (late) Shree Harivansh Rai Bachchan was a noted poet and Hindi writer. His most famous work was *Madhusaala* (1935). He was the recipient of the Sahitya Akademi award and the Padma Bhushan. He also did Hindi translations of Shakespeare's *Macbeth* and *Othello*. He passed away on 18th January 2003, at the age of 95. As per the Copyright Act, 1957, the rights over his work will be completed in the year 2063 (rights remain with the author for his lifetime plus 60 years).

TRADEMARK

Definition: A Trademark (or Trade Mark) is a unique symbol which is capable of identifying as well as differentiating products or services of one organization from those of others. The word Trademark stands for a sign, design, phrase, slogan, symbol, name, numeral, devise, or a combination of these.

OR

The Trademark is anything that identifies a brand to a common consumer.

ELIGIBILITY CRITERIA

For goods/services to be legally classified as Trademark, they need to pass the following conditions:

- **Distinctiveness** - The goods and services for which the protection is sought should possess enough uniqueness to identify it as a Trademark. It must be capable of identifying the source of goods or services in the target market.
- **Descriptiveness** - The Trademark should not be describing the description of the concerned goods or services. Descriptive marks are unlikely to be protected under Trademark law.
 - Ex: 'Apple' is used by a USA based multinational company that manufactures electronic gadgets.
- **Similarity to the prior marks** - The mark should be unique and should not be having similarity to the existing marks.

WHO CAN APPLY FOR A TRADEMARK

- Any person who is a proprietor of the Trademark is eligible to apply for registration of Trademark.
- The mark can be filed collectively by two or more applicants
- Example : Reliance symbol, which indicates all products falling under the organization.

ACTS AND LAWS

In India, Trademarks are governed under the Trademarks Act, 1999. The Trademark rules are governed by Trademarks Rules, 2002, The Acts and Rules have been amended from time to time. The latest amendments were done in 2010 and 2017 for Trademarks Acts and Trademarks, respectively.

DESIGNATION OF TRADEMARK SYMBOLS

- Ⓜ Represents that the Trademark is unregistered. This mark can be used for promoting the goods of the company.
- Ⓢ Represents that the Trademark is unregistered. This mark can be used for promoting brand services.
- ® Represents a registered Trademark/Service. The applicant of the registered Trademark is its legal owner.

CLASSIFICATION OF TRADEMARKS

Goods and Services under Trademarks are classified as per the 'Nice Agreement' (1957) administered by WIPO.

A total of 149 countries (84 state parties who are signatory to the Agreement and additional states who are following this classification for the Trademarks) and others (African Intellectual Property Organization, African Regional IP Organization and Trademark Office of European Union) are using the same Trademark classification.

Trademark classification comprises of 45 classes, out of which 34 are for goods and 11 are for services. Two examples of the classes are:

Class 1: Is for Chemicals for use in industry, science and photography, agriculture, horticulture and forestry; Unprocessed artificial resins, unprocessed plastics; Fire extinguishing and fire prevention compositions; Tempering and soldering preparations; Substances for tanning animal skins and hides; Adhesives for use in industry; Putties and other paste fillers; Compost, manures, fertilizers; Biological preparations for use in industry and science.

Class 45: Is for legal services; Security services for the physical protection of tangible property and individuals; Personal and social services rendered by others to meet the individuals needs.

REGISTRATION OF A TRADEMARK IS NOT COMPULSORY

Although, registration of a Trademark is not compulsory, registration provides certain advantages to the proprietor of the Trademark, such as:

Legal Protection – prevents the exploitation of the Registering Trademark by other companies/organizations/individuals, without proper authorization by the legal owner/s of the Trademark. In case of legal suits, a registered Trademark can serve as potent evidence of the lawful proprietorship of the Trademark.

Exclusive Right - grants the Trademark owner full rights to use it in any lawful manner to promote his business.

Brand Recognition - products/ services are identified by their logo, which helps create brand value over time. A strong brand is a huge pull for new customers and an anchor for existing customers. Registering a Trademark early and using it will create goodwill and generate more business for the brand owner.

Asset Creation - registered Trademark is an intangible property of the organization. It can be used for enhancing the business of the company as well as drawing new clients and retaining old one by the account of brand identification.

VALIDITY OF TRADEMARK

In India, a registered Trademark is valid for 10 years.

The period can be extended every 10 years, perpetually.

As per the Indian Trademarks Act, the renewal request is to be filed in the form "TM-R" within one year before the expiry of the last registration of the mark.

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TYPES OF TRADEMARKS REGISTERED IN INDIA

Trademark can be a word that must be able to speak, spell and remember.

It is highly recommended that one should choose the Trademark like invented word, created words, and unique geographical name.

One should refrain from Trademarks like common geographical name, common personal name and the praising words which describe the quality of goods, such as best, perfect, super, etc

Following are some examples of the registerable Trademarks:

- Any name including personal or surname of the applicant or predecessor in business or the signature of the person e.g. the Trademark “BAJAJ” is named after industrialist **Mr. Jamnalal Bajaj**.
- A word having no relevance to the product/services e.g. Trademark “INDIA GATE” is being used for food grains and allied products.
- Letters or numerals or any combination thereof e.g. YAHOO is the abbreviation of the phrase Yet Another Hierarchical Official Oracle. It has now become a worldwide famous Trademark.

Table 2.7: Some of the famous examples of Trademarks.

| S. No. | Type of the Mark | Mark | Company/Firm |
|--------|----------------------------|------------------------|------------------------|
| 1. | Distinctive General Word | ‘Apple’ | IT Company |
| 2. | Fanciful Designation | ‘Kodak’ | Photograph Film |
| 3. | Distinctive Personal Names | ‘Ford’ | Automotive |
| 4. | Device | ‘Udhaar’ | Financial Technology |
| 5. | Number | ‘4711’ | Perfume |
| 6. | Picture | Allegator | Knitwear Manufacturing |
| 7. | Slogan | Drink it to believe it | Soft Drinks |

TRADEMARK REGISTRY

In India, the operations of Trademarks are carried out from five cities i.e. Delhi, Mumbai, Ahmadabad, Kolkata, and Chennai. Each city has been assigned a bunch of states (Table 2.8). The businesses located in a particular state can only use the services of the assigned Trademark Registration Office. In the case of foreign applicants, jurisdiction is based on the location of the office of the applicant’s agent or attorney.

Table 2.8: Territorial jurisdiction of Trademark registration offices.

| S. No. | Office Location | States |
|--------|-----------------|---|
| 1. | Mumbai | Maharashtra, Madhya Pradesh, Chhattisgarh and Goa. |
| 2. | Ahmedabad | Gujarat and Rajasthan and Union Territories of Daman, Diu, Dadra and Nagar Haveli. |
| 3. | Kolkata | Arunachal Pradesh, Assam, Bihar, Orissa, West Bengal, Manipur, Mizoram, Meghalaya, Sikkim, Tripura, Jharkhand and Union Territories of Nagaland, Andaman & Nicobar Islands. |
| 4. | New Delhi | Jammu & Kashmir, Punjab, Haryana, Uttar Pradesh, Himachal Pradesh, Uttarakhand, Delhi and Union Territory of Chandigarh. |
| 5. | Chennai | Andhra Pradesh, Telangana, Kerala, Tamilnadu, Karnataka and Union Territories of Pondicherry and Lakshadweep Island. |

Source: <http://www.ipindia.nic.in/trade-marks.htm>

PROCESS FOR TRADEMARKS REGISTRATION

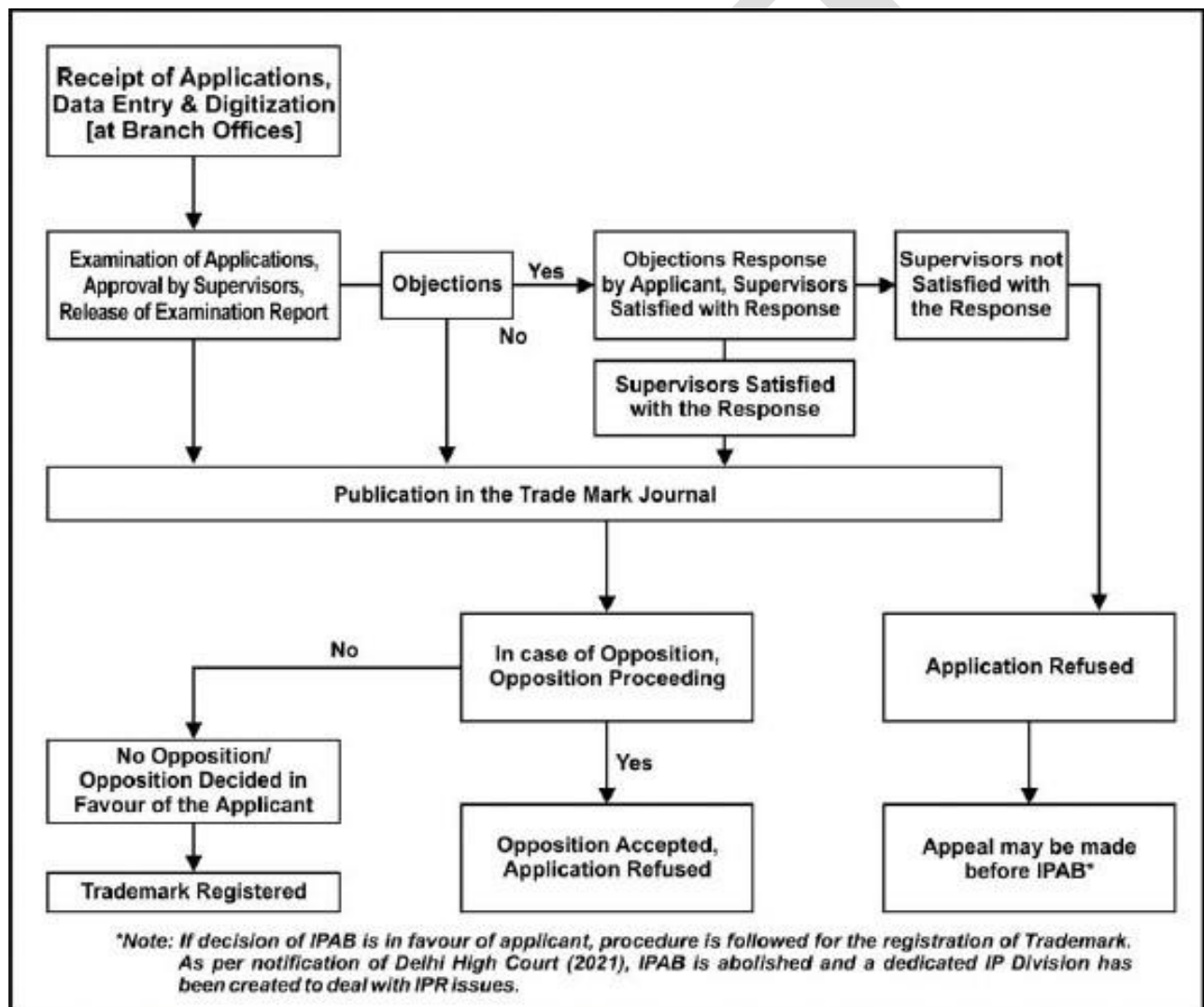
To seek Trademark registration, the proprietor of the Trademark has to fill an application. The proprietor may choose to hire an agent to fill and submit the application on his behalf. Before applying, the applicant needs to conduct a prior art search to ensure the registration criteria.

- a) **Prior Art Search** - Prior to applying for Trademark registration, it is always prudent to check whether the intended Trademark is already registered or not. Also, it is ascertained whether the intended Trademark is not similar to the ones already registered. The requisite search can be carried out using various web portals, such as:
- Public search for Trademarks by CGPDTM
 - WIPO's Global Brand Database
 - Trademark Electronic Search System (TESS).
 - MARKARIA Trademark Search Engine
 - VAKIL Search
 - Once the prior art search is over and the applicant is convinced about the distinctiveness of the Trademark, he can proceed to fill the application form for registration (TM-A). The application is filed at the Trademarks Office subject to the jurisdiction of the applicant.

The steps involved in the registration process are as follows:

- After the prior art search has been conducted, the applicant can apply for the registration on his own or with the help of a certified agent.
- The application is assigned an application number within a few days. The same can be tracked online at <https://ipindiaonline.gov.in/tmrpublicsearch/frmmain.aspx>.
- The application is scrutinized by a professional examiner. If everything is in order, the particulars of the application are published in the official Trademark journal <http://www.ipindia.nic.in/journal-tm.htm>.

- Otherwise, he will send the objections to the applicant for rectification. Based on the satisfactory response, the examiner would recommend the revised application to be published in the journal. If the application is rejected, the applicant may approach the Intellectual Property Division to challenge the rejection of an application by the examiner.
- Once the Trademark is published in the official journal, the public has an opportunity to file an objection, if any, within days. After hearing both the parties, the officer decides whether to proceed further for the grant of Trademark or disallow the grant of Trademark. In case of unfavourable outcome, the applicant has the right to contest the decision in front of the IPAB.
- Once the application has successfully completed all formalities, a Trademark registration certificate is issued in the name of the applicant.



Source: <http://www.ipindia.nic.in/workflow-chart.htm> (slightly modified)

FAMOUS CASE LAW:*Coca-Cola Company vs. Bisleri International Pvt. Ltd.*

MAAZA, a popular mango fruit drink in India, is a registered Trademark of an Indian company, Bisleri International Pvt. Ltd. The company transferred the rights (formulation, IPR and goodwill, etc.) to a beverage company, Coca-Cola, for the Indian Territory. However, in 2008, the Bisleri Company applied for registration of Trademark Maaza' in Turkey and started exporting the product with the mark MAAZA'. This was unacceptable to the Coca-Cola Company and thus filed a petition for permanent injunction and damages for passing-off and infringement of the Trademark.

It was argued on behalf of Plaintiff (Coca-Cola Company) that as the mark Maaza concerning the Indian market was assigned to Coca-Cola, and manufacture of the product with such mark, whether for sale in India or for export, would be considered as an infringement. After hearing both the parties, the court finally granted an interim injunction against the defendant (Bisleri) from using the Trademark MAAZA in India as well as for the export market, which was held to be an infringement of Trademark.

