



RESEARCH METHODOLOGY & INTELLECTUAL PROPERTY RIGHTS (IPR)

Course Code: BRMK557

MODULE - 4

Copyrights & Related Rights || Trademarks

A Simplified Notes for the 5th Semester As per
VTU Syllabus - 2022 Scheme



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Module 4

COPYRIGHTS & RELATED RIGHTS AND TRADEMARKS

Learning Module Outcomes

After reading this Module, the student will be able to:

- To Learn the Knowledge of Copyright and its classes.
- To learn the process of Copyright application.
- To gain information on the Trademark and its process.

Chapter 2.2: Copyrights and Related Rights (Textbook 2: Page 44-67)

- 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, and Copyright Enforcement Advisory Council (CEAC). International Copyright Agreements, Conventions and Treaties. Interesting Copyrights Cases.

Chapter 2.3: Trademark (Textbook 2: Page 68 - 80)

- 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, and Types of Trademark Registered in India, Trademark Registry, and Process for Trademarks Registration, Prior Art Search, and Famous Case Law: Coca-Cola Company vs. Bisleri International Pvt. Ltd.

Text Book: *"Intellectual Property: A Primer for Academia"* by Prof. Rupinder Tewari
Ms Mamta Bhardwaj, Publication Bureau Panjab University Chandigarh.

Chapter 2.2: Copyrights and Related Rights

2.2.0. Overview and definition

- Copyrights and Related Rights are one of the categories of IP and governed by the Copyright Act, 1957 of India.
- Copyrights 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 encompasses the 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.

2.2.1 Classes of Copyrights: In India, the following classes of Copyrights exist:

- **Literature:** Books, Essays, Research articles, Oral speeches, Lectures, compilations, Computer programs, Software, and 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 exclude any words or action intended to be sung, spoken or performed with the music.
- **Cinematograph Film:** It is a visual recording performed by any medium, formed through a process and includes a sound recording. For example, Motion Pictures, TV Programs, Visual Recording, Sound Recording, etc

2.2.2. Criteria for Copyright:

- To qualify for Copyright protection, a work must exist in some physical form.
- The duration of the existence of the physical form may vary from a very short period to many years.
- Virtually any form of expression that can be viewed or listened to is eligible to qualify as Copyright.
- Even notes that are hastily written down for a spontaneous speech are still considered to be protected by copyright law.

- The creator of a copyrighted work must express it using their ideas and not copy someone else's work. This means the work has to be original and created independently. Such original works are called Original Works of Authorship (OWA). While an OWA may resemble existing works, it should not be identical to them.
- The original work, regardless of its quality, quantity, or aesthetic merit, can still be considered copyrightable.
- In addition to the originality of the work, Copyright protection also requires at least some creative effort on the part of the author.
- Copyright protection has no minimum level of creativity. It is subjective and evaluated by the Office of Registrar of Copyright.
- For example: Changing the book's dimensions or an address book with only alphabetical phone number listings doesn't grant Copyright protection.

2.2.3. Ownership of Copyright: The Copyright laws clearly state the ownership of Copyright.

- The person who created the work is considered as the first (original) 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 without any 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 which could be the original author or the legal heir (in case of the death of the author), the 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 will be sold e.g. as part of a course pack.*

2.2.4. Copyrights of the Author

- Copyrights provide exclusive rights to the author in the areas of *publication, distribution, and usage*.
- A Copyright owner holds two types of rights
 1. Economic Rights (or Proprietary Rights)
 2. Moral Rights (or Personal Rights).

1. Economic Rights: These are associated with financial benefits 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.

2. Moral Rights: It includes the Right of Paternity and the 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 author has the right to prevent alterations to their work that misrepresent the original work or harm the author's reputation. A work can have multiple rights holders. For example, in a musical sound recording, the lyricist, composer, singer, musicians, and sound recorders may all have rights.

2.2.5. Copyright Infringements:*** As per the Copyrights Acts, 1957, The following acts are regarded as a violation of Copyrights:

1. Making copies for sale or hire without permission.
2. Permitting the public performance of copyrighted work is not allowed.
3. Distributing copies for trade or to harm the owner's interest.
4. Public exhibition of infringing copies for trade purposes.
5. Importation of infringing copies.
6. Translating a work without the permission of the owner.

2.2.6. Liability of Owner of an Auditorium/Hall

- The owner of an auditorium/hall is liable for punishment if he knowingly allows his premises to be used for communication of illegal copyright material (songs, music, dramas, etc.) to the public.
- Allowing a place to be used for profit that results in a copyright infringement is an offence unless the person was unaware or had no reasonable grounds to believe that it would be a copyright infringement.

2.2.7. Copyright Infringement is a Criminal Offence: According to the Copyright Act, if any person knowingly infringes the Copyright, he qualifies for the criminal offence.

- Copyright infringement can result in a fine of ₹50,000 and SIX months in prison.
- 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. There is a Copyright Board established by the Central Government in 1958 to decide specific copyright disputes.

2.2.8. Copyright Infringement is a Cognizable Offence

- A sub-inspector or higher-ranked police officer can seize copyrighted material without a warrant and present it in a court of law.

2.2.9. Fair Use Doctrine: 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 the four-part test:
 1. **The character of the use:** Use of the work is purely educational, non-profit and personal.
 2. **Nature of the work:** The use of work is factual and not imaginative.
 3. **Amount of the portion to be used:** Permission is not needed if only a small portion of Copyright-protected material is to be used.
 4. **Impact of use on the value of the Copyrighted material:** If a small portion of the work is copied and does not affect 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 radio/television.*
 - *Reproduction of the work by teachers or scientific researchers.*
 - *Use of any work prepared by the Secretariat of a Legislature.*
 - *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. So on.*

2.2.10. Copyrights and Internet: The twenty-first century is an era of digitisation. 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.
- Unauthorized use of copyrighted material on the internet is a growing concern. Some content may have been uploaded without the author's consent.
- 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".*
- As per Section 2(o) of the Copyright Act, of 1957, Literary Work includes computer programmes, tables and compilations, including computer databases. It is mandatory to supply the Source Code and Object Code along with the application for registration of Copyright.

2.2.11. Non-copyright work: The works not under the jurisdiction of Copyrights are as follows:

- 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. Any fact a person discovers in the course of research cannot be Copyright protected. For example, the author of a book on - Buddhism takes ten to 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 excavation 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 Copyrightable subject matter as there is not much scope for creativity.
- Digitally created works and Copyrighted works transformed into a digital format and placed on the internet are Copyright protected.
- The Copyright registration for a website, as a whole, is not possible. However, different components/rudiments of a website can be granted Copyright registration. However, a separate application for each component of work has to be filed to seek Copyright registration.
- A computer or mobile App qualifies for Copyright registration.
- If someone swipes your picture/song/video from the internet and uses it for their purposes, it is a Copyright infringement.

2.2.12. Copyright Registration:

- It is not necessary to register a work to claim Copyright. Once a work is created via any medium, the work receives automatic Copyright safety.
- 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. It is merely a prima facie proof of an entry in respect of the work in the Copyright register maintained by the Registrar of Copyrights.

- 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.
- The author of the work should register for Copyright for better legal protection.
- More details about copyright registration (<https://copyright.gov.in/>).

2.2.13. Judicial Powers of the Registrar of Copyrights

- The Registrar of Copyrights has the powers of a civil court when trying a suit under the Code of Civil Procedure in respect of the following matters:
 - 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.

▪ **Process of Copyright Registration*****

- Any person who is either an author of the work or assignee of the concerned work can apply for Copyright.
- A duly filled application (Form XIV) is submitted to the Copyright Office at the New Delhi office.
- The application can be submitted by post or online registration through the E-filing facility (www.copyright.gov.in).
- Usually, it takes around 2-3 months to get the work registered by the Copyright Office. After applying, there is a mandatory waiting period of 30 days.
- If any person has any objection to the claim/s made in the application, he can contact the office of the Registrar of Copyrights.
- After giving an opportunity of hearing to both the parties, the Registrar may decide the case in favour or against the author of the work.
- Once the objections (if any) are cleared, the application is evaluated by the examiners.
- If any doubts/queries are raised, the applicant is given ample time (around 45 days) to clear these objections.

- The process included in Copyright filing to grant is depicted below in the flow chart:

Figure: Flow chart for the process of Copyright Registration

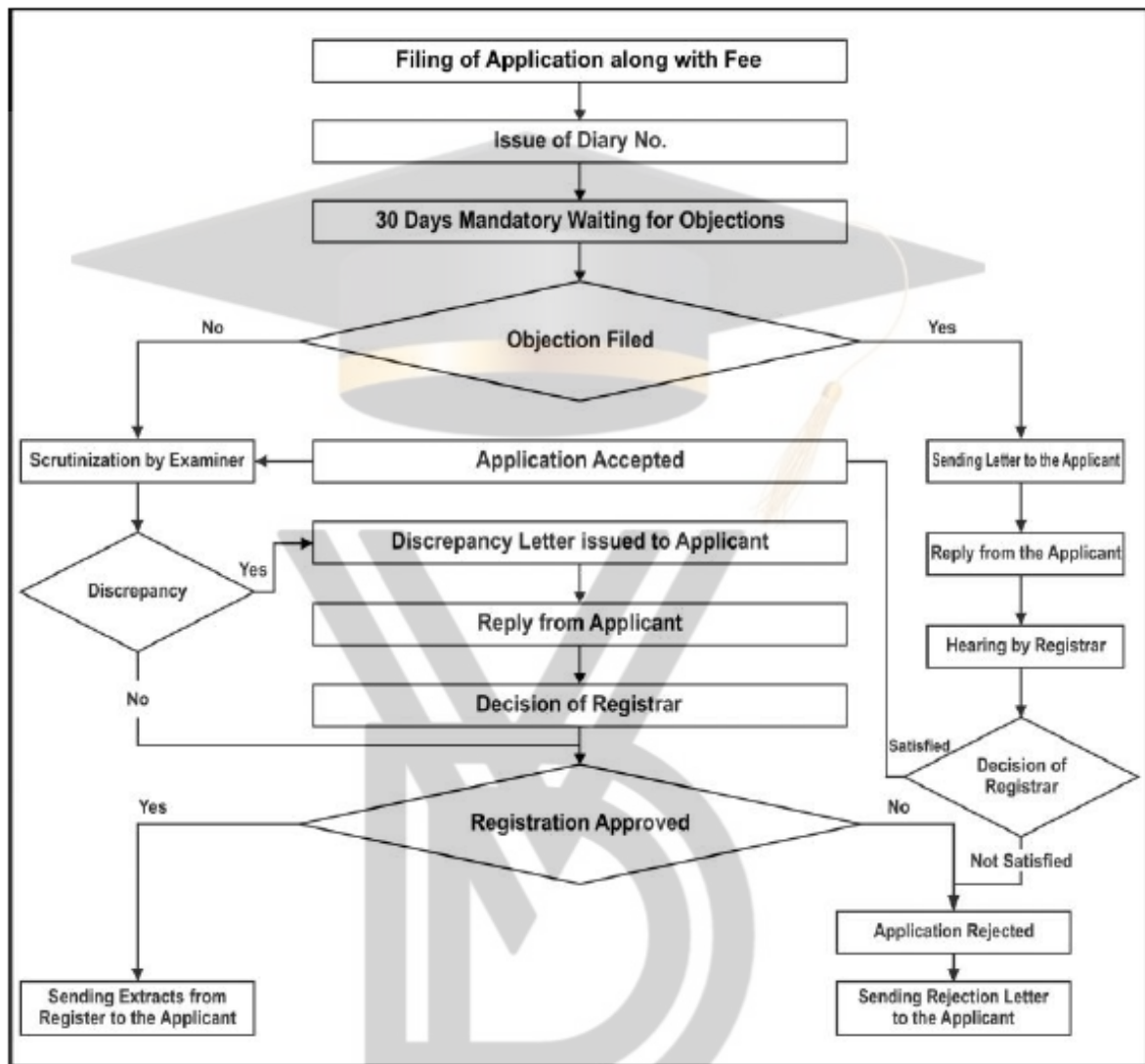


Table: Important forms about Copyrights.

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/fmformsDownload.aspx>

2.2.14. 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.

Table: Fee structure for Copyrights.

Sl. No	Particulars Fee in Rs	Fee in Rs
1.	For an application for registration or Copyright Literary, Dramatic, Musical or Artistic work	500 /work
2.	For an application for registration of Copyright in a Cinematograph Film	5000
3.	For an application for registration of Copyright in a Sound Recording	2000
4.	Provided that in respect of a Literary or Artistic work which is used or is capable of being used about any goods or services	2000
5.	Making any change in Literary, Dramatic, Musical or Artistic work	200
6.	Provided that in respect of a Literary or Artistic work which is used or is capable of being used about any goods or services	1000
7.	For an application for registration of change in particulars of Copyright entered in the Register of Copyrights in respect of Cinematograph Film	2000
8.	For an application for registration of changes in particulars of Copyright entered in the Register of Copyrights in respect of Sound Recording	1000
9.	For an application for prevention of importation of infringing copies per place of entry	1200

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

2.2.15. 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.'
- When you create a new work that includes previously published material, such as a compilation or derivative work, it's important to include the year of the first publication of the new work. However, if the new work is a pictorial, graphic, sculptural work, greeting card, postcard, stationery, jewellery, doll, or toy, you don't need to include the year.
- The name or the abbreviation by which the name can be recognised of the copyright owner 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.

2.2.16. 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 the case of literature, dramatic, musical and artistic works) or from the date of publication of the work (in the case of cinematograph films, sound recordings, photographs, posthumous publications, works of government and works of international organisations).

2.2.17. Copyright Profile of India

- A comparative five-year (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.
- 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.

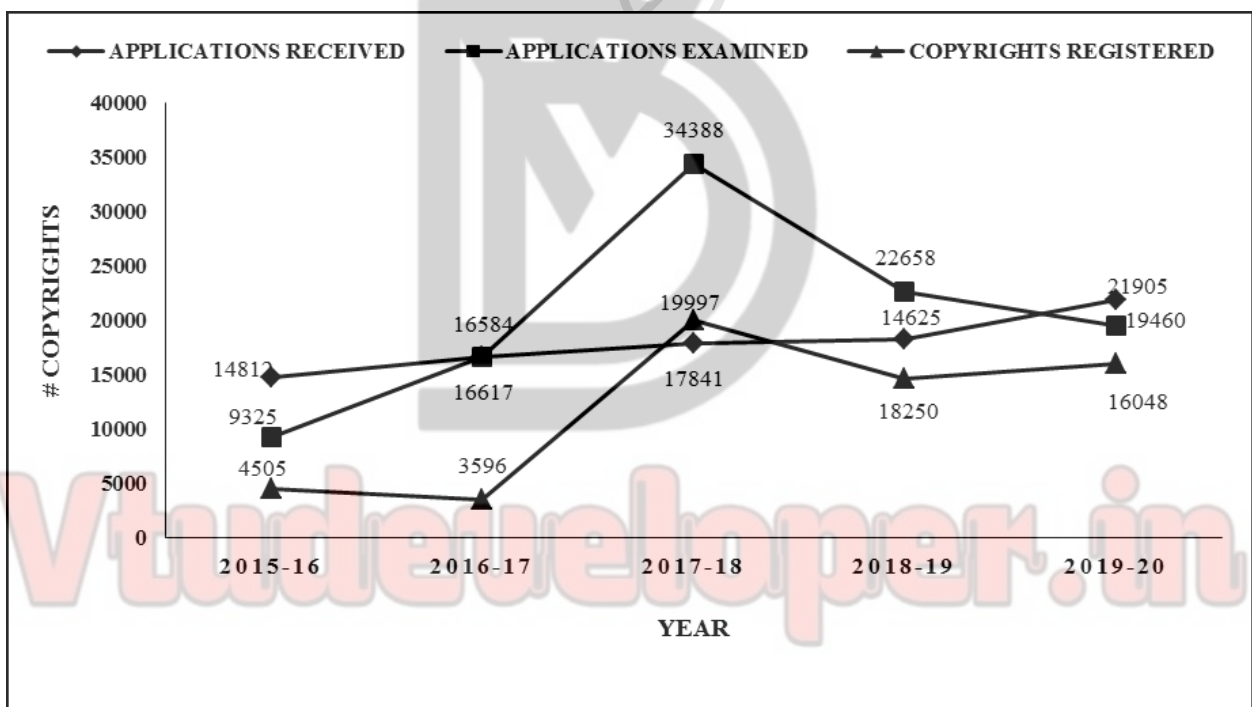


Figure: Copyrights profile (India) for the period 2015-20.

- **Source:** Annual Reports, Office of CGPDTM, Mumbai (2011-20)
- (<https://dipp.gov.in/sites/default/files/annualReport-English2020-21.pdf>)

2.2.18. Copyright and the word '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 the 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 non-disclosure or posts this article on the internet (i.e. public domain) it would be considered as published.
- It is to be noted that both published and unpublished works can be registered under Copyright.

2.2.19. Transfer of Copyrights to a Publisher

- Owner of copyrighted work often sell their rights to publishers in exchange for compensation, as they may not have the resources to promote their work to a larger audience.
- Transferring copyrights without conditions to publishers or anyone else may have the following negative consequences for the copyright owner.
 - A publisher may prevent author/s from displaying their articles on the institutes' websites.
 - The new owner of Copyright may not even allow the author to revise his work.
 - A publisher might print an insufficient number of hard copies.
 - Not show interest in uploading the soft copy of the work on the internet.
- Hence be careful when signing with publishers. They may only get rights to print and sell hard copies, while digital rights can stay with the author.
- An author may also put a time limit for the printing and sale of the books/articles.
- 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.
- It is strongly advised that authors must apply their mind while signing the Copyright agreement.

2.2.20. Copyrights and the Word 'Adaptation: In Copyright law, adaptation refers to creating a new work based on an existing one. The Copyright Act defines adaptations as

- a. *the transformation of a dramatic work into a non-dramatic work.*
- b. *Changing a literary or artistic work into a drama.*
- c. *Re-arrangement of a literary or dramatic work.*
- d. *Depiction through pictures of a literary or dramatic work.*
- e. *The making of a cinematograph film of a literary dramatic or musical work.*

2.2.21. 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.*

2.2.22. 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.

2.2.23. Copyright Society: It is a registered collective administration society formed by authors and other owners of the Copyright. Society can perform the following functions:

- a. Keep track of all the rights and infringements related to their clients.
 - b. Issue licences in respect of the rights administered by the society.
 - c. Collect fees in pursuance of such licences.
 - d. Distribute such fees among owners of Copyright after making deductions for the administrative expenses.
- 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. The registered Copyright Societies in India are:
 - i. Society for Copyright Regulation of Indian Producers for Film and Television (SCRIPT) Worli, Mumbai.
 - ii. For cinematograph and television films: The Indian Performing Right Society Limited (IPRSL), Andheri East, Mumbai.
 - iii. For musical works: Phonographic Performance Limited (PPL) Flame Proof Equipment Building, Andheri (West), Mumbai.

2.2.24. 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.
- As per the Act, 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.
 - 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 dramatic or musical work.

2.2.25. 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.

2.2.26. International Copyright Agreements, Conventions and Treaties

- Any creative work is not protected and enforced automatically worldwide because Copyright laws are territorial by nature i.e. Laws are valid only in the country in which they have been created.
- To secure protection for Indian works in foreign countries, the author needs to apply separately to each country or through dedicated international

Conventions on Copyright and Neighboring (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*
 2. *Universal Copyright Convention, 1952*
 3. *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961.*
 4. *Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties, 1979.*
 5. *Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, 1995.*
- 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.

2.2.27. Interesting Copyrights Cases

1. *David vs. Macaques, Indonesia, Year 2011*
2. *'Happy birthday to you' case law*
3. *Amitabh Bachchan to lose Copyrights over his father's works in 2063*

1. *David vs. Macaques, Indonesia, the Year 2011:*

- It is also called the Monkey selfie copyright dispute.
- In 2011, a UK-based photographer David Slater put his camera on a tripod in the wildlife Sanctuary in Indonesia 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.
- The selfie picture became famous worldwide after it was published in the British media.
- 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.

2. '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.
- 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.
- The song is in the public domain in the United States and the European Union. Warner Chappell Music had previously claimed copyright on the song in the US and collected licensing fees for its use; in 2015, the copyright claim was declared invalid and Warner Chappell agreed to pay back \$14 million in licensing fees. those who had paid licensing fees to use the song.

3. 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.
- 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, of 1957, the rights over his work will be completed in the year 2063 (rights remain with the author for his lifetime plus 60 years).
- After the year 2063 all the works created by Harivansh Rai Bachchan will enter the public domain and he will have no rights over them.

2.3 Trademark

2.3.0. Overview and definition

- A trademark is a unique symbol or sign that distinguishes and identifies the products or services of one organization from those of others.
- The word “Mark” stands for a sign, design, phrase, slogan, symbol, name, numeral, devise, or a combination of these.
- A trademark essentially identifies a brand to a common consumer.

2.3.1. Eligibility Criteria for Trademark: For goods/services to be legally classified as Trademark, they need to pass the following conditions:

1. **Distinctiveness:** The Trademark must be unique enough to identify the source of goods or services in the target market.
2. **Non-descriptiveness:** Descriptive trademarks are generally not protected under trademark law. However, if a descriptive word or phrase gains a secondary meaning that is associated with a particular brand or product, it may be eligible for trademark registration. For example, "Apple" is a registered trademark of a USA-based multinational company known for electronic gadgets.
3. **Similarity to the prior marks:** The mark should be unique and should not be having similarity to the existing marks.




2.3.2. Who Can Apply for a Trademark

- Any person who is a proprietor of the Trademark is eligible to apply for registration of the Trademark.
- The mark can be filed collectively by two or more applicants and for that purpose, support documents need to be submitted.
- An organization or association can file for the collective mark and the same can be used by its members. The most appropriate example for this mark is the Reliance symbol, which indicates all products falling under the organization.

2.3.3. Acts and Laws

- In India, Trademarks are governed under The Trademarks Act, of 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.
- The administration of matters about Trademarks is carried out by the Office of CGDPDTM, GoI.

2.3.4. 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.

2.3.5. Classification of Trademarks.

- Goods and Services under Trademarks are classified as per the Nice Agreement (1957) administered by WIPO.
- A total of 149 countries and others are using the same Trademark classification.
- Trademark classification comprises 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, and 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 individual's needs.*

2.3.6. 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:
 1. **Legal Protection:** Registering a trademark prevents unauthorized exploitation and serves as strong evidence of ownership in legal disputes.
 2. **Exclusive Right:** Grants the Trademark owner full rights to use it in any lawful manner to promote his business.
 3. **Brand Recognition:** A logo can create brand value over time. A strong brand attracts new customers and retains existing ones. Registering a trademark early and using it consistently generates more business for the owner.
 4. **Asset Creation:** A trademark is a valuable asset for businesses. It enhances the company's reputation and helps in attracting and retaining clients through brand recognition.

2.3.7. 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.

2.3.8. Types of Trademark 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 a Trademark like an invented word, created words, and a unique geographical name.
- It is recommended to avoid using trademarks that are common geographical names, common personal names, or overly promotional words such as "best" or "perfect."
- Following are some examples of the registerable Trademarks:
 - i. Any name including the 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. Similarly "TATA"
 - ii. A word having no relevance to the product/services e.g. Trademark "INDIA GATE" is being used for food grains and allied products.
 - iii. Letters or numerals or any combination thereof e.g. "YAHOO" or "ORACLE" are the abbreviation of the phrase.

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

2.3.9. Trademark Registry

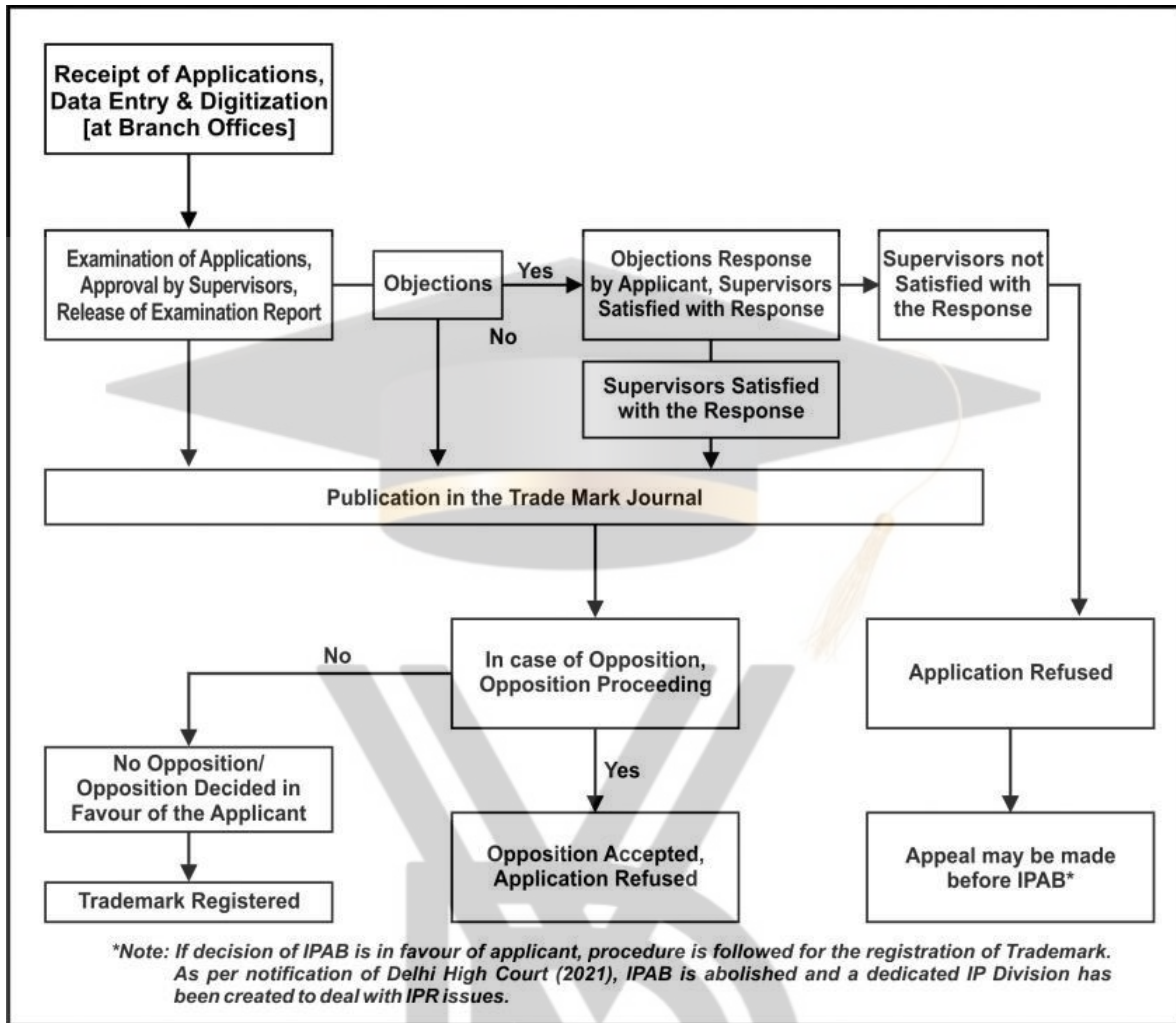
- In India, the operations of Trademarks are carried out from five cities i.e. Delhi, Mumbai, Ahmadabad, Kolkata, and Chennai (see the table below)
- In the case of foreign applicants, jurisdiction is based on the location of the office of the applicants' agent or attorney.

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.

2.3.10. Process for Trademarks Registration****

- To seek Trademark registration, the proprietor of the Trademark has to fill out an application.
- Before applying, the applicant needs to conduct a prior art search to ensure the registration criteria.
- **Prior Art Search:** Check if your intended trademark is already registered and not similar to existing ones before applying for registration. The requisite search can be carried out using various web portals such as
 - Public search for Trademarks by CGPDTM*
 - Trademark Electronic Search System (TESS)*
 - WIPOs Global Brand Database*

Figure: Flow chart for the process of Trademark registration

- 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 application is scrutinized by a professional examiner.
 - If everything is in order, the particulars of the application are published in the official Trademark journal.
 - 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 90 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 an unfavourable outcome, the applicant has the right to contest the decision in front of the IPAB.
- Once the application has completed all formalities, a Trademark registration certificate is issued in the name of the applicant.

2.3.14. 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 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 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 the Trademark.

VTU QUESTIONS: MODULE 4

▪ **DEC 2023/Jan 2024**

Module-4

- 7 a. Explain the criteria that an original work must meet to qualify for copyright protection. (10 Marks)
- b. Explain the process of copyright registration? What are the benefits for the copy right holders? (10 Marks)

OR

- 8 a. Explain the process of Trademark registration. (10 Marks)
- b. Explain the classification system for trademarks and its role in categorizing different types of marks. (10 Marks)

▪ MODEL QP 1- 2024-2025

Module-4				
Q. 07	a	Define the term Copyright and write its classes.	L1	5
	b	What are the two exclusive rights owned by the copyright owner? Explain briefly.	L2	5
	c	What are the roles and functions of the copyright board and the copyright society in administering copyright laws and regulations?	L2	10
OR				
Q. 08	a	What are the key eligibility criteria that a mark must meet to qualify for trademark protection? List advantages that a proprietor gains through trademark registration	L2	10
	b	Using a flowchart, explain the steps involved in the process of Trademarks Registration.	L3	10

▪ MODEL QP 2- 2024-2025

Module-4				
Q. 07	a	What are the key considerations and tests for determining fair use doctrine under copyright law? Explain with examples.	L2	5
	b	Using a Flow chart, explain the important steps involved in the process of Copyright Registration.	L2	9
	c	What were the key events and circumstances surrounding the copyright dispute between photographer David Slater and the macaques in Indonesia in 2011? Explain.	L2	6
OR				
Q. 08	a	What are the different categories of trademarks recognized under Indian law, and tabulate the famous trademark types with examples	L2	10
	b	Explain by using a process flowchart, the steps involved in trademark registration.	L2	10

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