

Module 4

Copyrights and Related Rights

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.

Textbook :

Intellectual Property A Primer for Academia by Prof. Rupinder Tewari Ms. Mamta Bhardwaj

Reference Book:

Intellectual Property Rights by N.K.Acharya Asia Law House 6th Edition. ISBN: 978- 93-81849-30-9.

4.1 Copyrights and Related Rights

Copyrights :

‘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’ encompass the author’s work in the fields of dramatics, sound recording, film/video recordings, paintings, architecture, etc.

Copyrights and Related Rights as Categories of IP:

Copyrights and Related Rights are one of the categories of IP and governed by the Copyright Act, 1957 of India. This Act provides rights of reproduction, communication to the masses, adaptation, and translation of the work.

4.2 Classes of Copyrights(Types or Categories)

In India, following classes of Copyrights exist:

1.Literature

Books, Essays, Research articles, Oral speeches, Lectures, Compilations

Computer programme, Software, Databases

2.Dramatics

Screenplays

Dramas

3. Sound Recordings

Recording of sounds regardless of the medium on which such recording is made, e.g., a Phonogram and a CD-ROM.

4. Artistic

Drawing, Painting, Logo, Map, Chart, Photographs

Work of Architecture, Engravings, and Craftsmanship

5. 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.

6. 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.

Key Terms Author and Work in Copyrights :

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.

4.3 Criteria for Copyright

1. Qualification for Copyright Protection

To qualify for Copyright protection, a work must exist in some **physical (or tangible)** 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 which can be viewed or listened to is eligible to qualify as Copyright. Even hurriedly scribbled notes for an impromptu speech are considered copyrightable material.

2. Originality and Original Work of Authorship (OWA)

The Copyright work has to be expressed by the creator in his frame of thought. In other words, 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). It may appear similar to already existing works but should not be the same. The original work may lack quality or quantity or aesthetic merit or all these parameters; still, it will pass the test of copyrightable work.

3. Creative effort: In addition to originality for the work, Copyright protection also requires at least some **creative effort** on the part of the author. There is no minimum limit for the extent of creativeness; it is a subjective matter. The minimal level of creativity needed for Copyright protection depends on the judgment of the evaluator (adjudicated by the Office of Registrar of Copyright).

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.

4.4 Ownership of Copyright

1. Ownership of Copyright

The Copyright laws clearly state the 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.

2. Obtaining Permission to use Copyrighted Material

To obtain permission to use copyrighted material, a request 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).

4.5 Copyrights of the Author

The Copyrights of the creator/author are legally protected under Section 14 of the Copyright Act, 1957. The content (i.e. work) created by the author cannot be used or published by anyone without the author's consent. 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. Economic Rights (or Proprietary Rights) and Moral Rights (or Personal Rights).

1. Economic 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.

2. Moral Rights :

Moral Rights include '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.

Multiple Rights Holders

It is pertinent to mention that for a work, there can be more than one rights holders, for instance, a musical sound recording has many rights holders, such as the lyricist, music composer, singer, musicians and sound recorders.

4.6 Copyright Infringements

1. Which acts are Copyright Infringements?

As per the Copyrights Act, 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.

Permitting any place for the performance of owned work (in public) where such performance constitutes an infringement of Copyright.

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.

2. 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. If a person permits for profit any place to be used for communicating the work to the public, where such communication establishes an infringement of the Copyright unless he was not aware of and had no reasonable ground for believing that such communication to the public would be an infringement of Copyright, he will be deemed to have committed an offence under the Copyright Act.

3. 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 Rs 50,000/-. In case of a second and subsequent conviction, the minimum punishment is imprisonment for one year and a fine of Rs 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.

4. 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.

4.7 Fair Use Doctrine

1. 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).

2. The Fair Use Doctrine - Four-Part Test:

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:

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 in nature 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. However, this parameter is debatable now.
4. **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.

3. Fair Use Doctrine Examples :

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.

4.8 Copyrights and Internet

1. Challenges in the Digital Era :

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. There is growing concern about the ability to pull Copyrighted material from the internet without permission. Note that material may have been placed on the internet without the author's permission.

2. Internet Use and Copyright:

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”.

3. Inclusion of Computer Programmes in Literary Work :

As per Section 2(o) of the Copyright Act, 1957, 'Literary Work' includes computer programmes, tables and compilations, including computer databases. It is mandatory to supply 'Source Code' and 'Object Code' along with the application for registration of Copyright.

4.9 Non-Copyright Work

Works which are exclusions from Copyright Protection :

The works not under the jurisdiction of Copyrights are as follows:

Exclusion of Copyright for Ideas, Concepts, and Principles : The ideas, concepts, and principles themselves cannot be protected under Copyright, only the form in which they are expressed can be copyrighted.

Exclusion of Copyright for Facts and Discoveries 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, 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.

Non-Copyrightable Elements : Copyright does not protect titles, names, slogans, short phrases, short word combinations, methods, or factual information.

Certificates : Certificates are not considered as Copyrightable subject matter as there is not much scope for creativity.

Digital Works: Digitally created works and Copyrighted works transformed into a digital format and placed on the internet are Copyright protected.

Copyright Registration for Websites and Apps: Copyright registration for a website as a whole is not possible. However, different components/rudiments can be granted Copyright registration. e.g. 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'*). However, a separate application for each component of work has to be filed for seeking Copyright registration.

Copyright Registration for Computer or Mobile Apps : A computer or mobile App qualifies for Copyright registration. An Application is a complete, self-contained computer program that is designed to perform a specific task. An App usually has dynamic content and is designed for user interaction. It may be used

directly or indirectly in a computer or handheld electronic device.

Copyright Infringement: Unauthorized Use of Digital Content 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.

4.10 Copyright Registration

1. Automatic Copyright Protection:

It is not necessary to register a work to claim Copyright. Once a work is created via any medium, the work receives automatic Copyright protection. In other words, there is no formal request to be submitted to the office of the Copyright for acquiring Copyright. The act of creation itself grants the creator inherent Copyright rights to their work.

2. Role of Copyright Registration :

Copyright registration itself does not grant any new rights to the creator; rather, it serves as prima facie proof(In legal terms, "prima facie" means that, on the face of it or at first glance) 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.

3. Copyright Registration Advice:

It is advisable that the author of the work registers for Copyright for better legal protection. In India, Copyright matters, including Copyright registration, are administered under the Copyright Act, 1957, and Copyright Rules, 2013.

4. Prominent Forms for Copyright Registration

Prominent forms for copyright registration can be accessed on the official website: <https://copyright.gov.in/>. FORM No. XIV is used for an application for copyright registration under section 45 of the Copyright Act, 1957. It includes a request for the Registrar of Copyrights to make entries in the Register of Copyrights based on the enclosed statement of particulars, and it declares that, to the best of the applicant's knowledge, there are no other claims or disputes regarding the copyright of the work. The "Statement of Particulars" in this form provides detailed information for copyright registration, including the registration number, applicant details, nature of interest, class and description of the work, title, language, author information, publication details, rights owners, authorized

persons, and additional details specific to artistic works, such as location, registration under the Designs Act 2000, and industrial reproduction information.

5. 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.

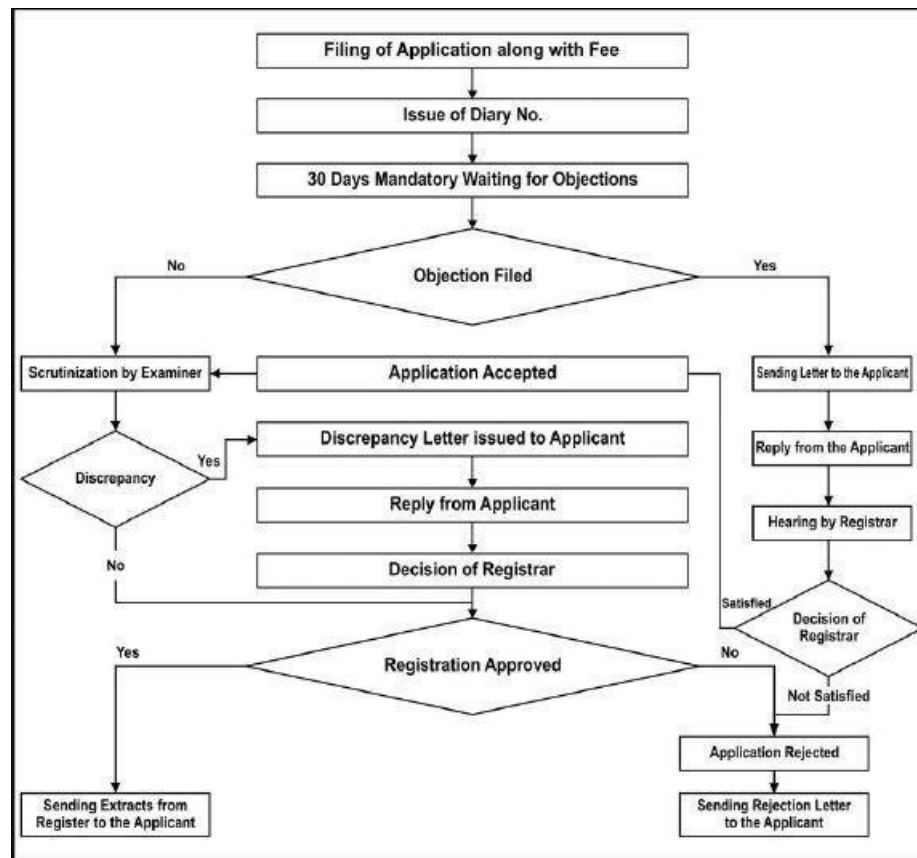
6. Application Submission

A completed application (Form XIV) for copyright registration can be submitted to the Copyright Office at the address: The Registrar of Copyright, Plot no. 32, Boudhik Sampada Bhawan, Sector 14, Dwarka, New Delhi - 110075. The submission can be made by post or through the online registration using the 'E-filing facility' available at www.copyright.gov.in. Eligible applicants, whether authors of the work or assignees of the work, can file the copyright application.

7. Application Evaluation

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 favor 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 elements included in Copyright filing to grant are depicted below in the flow chart:



4.11 Important Copyright Forms :

Name of Form	Form No.
Application for registration of Copyright	Form-XIV
Application for registration of changes in particulars of Copyright	Form-XV
Registration of a Copyright Society	Form-VIII
Application for the relinquishment of Copyright	Form-I

Source:

<http://Copyright.gov.in/fmformsDownload.aspx>

4.12 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.

Attributes and Fee :

Application for registration of Copyright (Literary, Dramatic, Musical, or Artistic work): Rs 500

per work

Application for registration of Copyright in a Cinematograph Film: Rs 5,000

Application for registration of Copyright in a Sound Recording: Rs 2,000

Making any change in Literary, Dramatic, Musical, or Artistic work: Rs 200

Making any change in a Literary or Artistic work used in relation to goods or services: Rs 1,000

Application for change in particulars of Copyright in a Cinematograph Film: Rs 2,000

Application for change in particulars of Copyright in a Sound Recording: Rs 1,000

Application for prevention of importation of infringing copies per place of entry: Rs 1,200

4.13 Copyright Symbol

It is not necessary to place the Copyright symbol with your name and 'year created' near your published or printed materials - but if you do, it's easier to nail someone for infringement on your Copyright if you go to court. 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.

4.14 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).

4.15 Copyright Profile of India

A comparative five years (2015-20) study revealed a gradual increase in the number of 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.

4.16 Copyright and the word 'Publish'

Key Terms Author and Work in Copyrights :

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.

Copyright and the word 'Publish' :

A work is considered published when it is in the public domain on an unrestricted basis.

For example, if a person writes an article called 'Life in Himalayas' and distributes it with restrictions on disclosure, it is not considered published in the Copyright sense.

If the author removes the condition of non-disclosure or posts the 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.

4.17 Transfer of Copyrights to a Publisher

The original authors of the Copyrighted work may not have the wherewithal (i.e. the resources or financial capability) 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.

Repercussions of Unconditional Transfer :

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.

Selective Rights Transfer :

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 while retaining digital rights for the said work. An author may also put a time limit for the printing and sale of the books/articles, etc.

Changing Landscape with the Internet Era :

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 into the public domain. But this freedom cannot be enjoyed by those who are already under the publishing contract.

Statutory Termination Right :

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.

Author’s Caution :

It is strongly advised that authors must apply their mind while signing the Copyright agreement.

4.18 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:

Actions Considered as Adaptations :

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

4.19 Copyrights and the Word ‘Indian Work’

‘Indian work’ means a literary, dramatic, or musical work provided

1. The author of the work is an Indian citizen.
2. The work is first published in India.
3. 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.

4.20 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.

4.21 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. As per Section 33 of the Copyright Act, 1957, a Copyright Society is a registered collective administration society formed by authors and other owners of the Copyright. Society can perform the following functions :

- 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.

Formation of Copyright Society :

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:

Registered Copyright Societies in India :

- Society for Copyright Regulation of Indian Producers for Film and Television (SCRIPT) 135 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).

4.22 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:

Appeals against Orders:

The Copyright Board has the authority to hear appeals against the orders of the Registrar of Copyrights.

Rectification of Entries :

The Board can hear applications for rectification of entries in the Register of Copyrights.

Disputes on Assignment:

It adjudicates upon disputes related to the assignment of Copyrights.

Compulsory Licences :

The Board has the power to grant compulsory licences to publish or republish works in certain circumstances. It can also grant compulsory licences to produce and publish translations of literary or dramatic works in any language after seven years from the first publication.

International Disputes :

The Copyright Board is involved in hearing and deciding disputes concerning the publication status or the term of Copyright of a work in another country.

Royalty Rates :

It is responsible for fixing rates of royalties, particularly in respect of sound recordings under the cover-version provision.

Resale Share Right:

The Board determines the resale share right in original copies of paintings, sculptures, drawings, and original manuscripts of literary, dramatic, or musical works.

4.23 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.

4.24 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 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:

Berne Convention for the Protection of Literary and Artistic Works, 1886. (<https://www.wipo.int/treaties/en/ip/berne/>)

Universal Copyright Convention, 1952. (<http://www.unesco.org/new/en/culture/themes/creativity/creative-industries/copyright/universal-copyright-convention/>)

Rome Convention for the Protection of Performers, Producers of Phonograms and

Broadcasting Organizations, 1961. (<https://www.wipo.int/treaties/en/ip/rome/>)

Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties, 1979. ([https://treaties.un.org/doc/Treaties/1979/12/19791213%2009-00%20AM/Ch\\$\\$_XXVIII\\$\\$_01\\$\\$_ap.pdf](https://treaties.un.org/doc/Treaties/1979/12/19791213%2009-00%20AM/Ch$$_XXVIII$$_01$$_ap.pdf))

Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, 1995. ([https://www.wto.org/english/tratop_e/trips\\$\\$_e/intel2\\$\\$_e.htm](https://www.wto.org/english/tratop_e/trips$$_e/intel2$$_e.htm))

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.

4.25 Interesting Copyrights Cases :

Copyrights Cases 1. 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](https://www.wipo.int/wipo$$_magazine/en/2018/01/article$$_0007.html)).

Copyrights Cases 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. 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.

Copyrights Cases 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. His most famous work was Madhushaala (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).

4.26 Trademark Definition

In simple language, 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 'Mark' stands for a sign, design, phrase, slogan, symbol, name, numeral, devise, or a combination of these. Essentially, the Trademark is anything that identifies a brand to a common consumer.

4.27 Eligibility Criteria for Trademarks

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. However, descriptive words may be registered if they acquire "secondary meaning", such as the brand name '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.

4.28 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 and for that purpose, support documents need to be submitted.

Collective Marks:

An organization or association can file for a collective mark. This mark is then used by its members to collectively identify their products or services. An example of a collective mark is the 'Reliance' symbol, which indicates all products falling under the umbrella of the organization.

4.29 Acts and Laws

In India, Trademarks are governed under **The Trademarks Act, 1999**

(http://www.ipindia.nic.in/writereaddata/Portal/IPOAct/1_43_1_trade-marks-act.pdf).

The Trademark rules are governed by Trademarks Rules, 2002 (http://www.ipindia.nic.in/writereaddata/Portal/IPO_Rule/1_56_1_1_59_1_tm_rul_rules_2002_1_.pdf). 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 pertaining to Trademarks is carried out by the Office of CGDPDTM, Government of India.

4.30 Designation of Trademark Symbols

Trademark symbols play a crucial role in indicating the status of protection associated with a particular mark. Here are the commonly used trademark symbols:

™ :

This symbol represents that the Trademark is unregistered. It can be used for promoting the goods of the company. The TM symbol indicates that the company is using the mark as a trademark, but it has not yet been officially registered.

SM :

Similar to TM, SM represents that the Trademark is unregistered. However, SM is specifically used for promoting brand services. It signifies that the company is claiming the mark as a service mark for its services.

® :

The R symbol represents a registered Trademark or Service Mark. The presence of this symbol indicates that the Trademark has been officially registered, and the applicant is its legal owner. It provides a higher level of protection and exclusivity.

4.31 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 65 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 (<http://euipo.europa.eu/ec2/static/html/nice-general-remarksen.html?jsessionid=8FBC790A663FAC9092ACDD9ED1AC65E.ec2t1>). Two examples of the classes are:

Class 1: 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: 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.

The **Vienna codification** established under the Vienna Agreement (1973) is an international classification of the figurative elements of marks. The relevant Vienna code class can be searched on the link: <https://www.wipo.int/classifications/nivilo/vienna/index.htm?lang=EN/#>. The classification is used to divide all figurative elements into categories (from 1 to 29), divisions (from 1 to 19) and sections (from 1 to 30).

For example, the representation of "a little girl eating" belongs to Category 2 (Human beings), Division 5 (Children), Main Section 3 (Girls). If auxiliary sections are used, the figurative element can be identified additionally with the Auxiliary Section 18 (Children drinking or eating, Code A 2.5.18). The codification of this example will be then indicated as 2.5.3, 18 (main and auxiliary sections).

4.32 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 Trade- mark. In legal suits, a registered Trademark can serve as potent evidence of the lawful proprietor- ship 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: A 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 ones by the account of brand identification.

To find out more about Registered Trademarks in India, one may look at <http://www.ipindia.nic.in/writereaddata/Portal/Images/pdf/well-known-trademarks-updated-newone.pdf>.

It is pertinent to mention that no legal course of action can be taken against the unlawful use of an unregistered Trademark. For unregistered marks (sometimes known as 'Common Law Trademarks', which are defined as the law rights that generally do not require formal registration for enforcement),

action can be brought against any person for the passing off goods or services as the goods or services provided by another person. In such cases, the unregistered Trademarks have to prove the establishment of goodwill or reputation connected with the goods or service.

4.33 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.

4.34 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 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. To ensure all these characteristics in a Trademark, it is suggested to conduct a market survey to ensure if a similar mark is used in the market. 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 Officious Oracle'. It has now become a worldwide famous Trademark.

Some of the Famous Examples of Trademarks :

Here are examples of different types of trademarks:

1. **Distinctive General Word & 'Apple' (IT Company):** Apple is a distinctive general word used as a trademark by the well-known IT company.
2. **Fanciful Designation & 'Kodak' (Photograph Film):** Kodak is a fanciful designation created for the specific purpose of serving as a trademark for photographic films.
3. **Distinctive Personal Names & 'Ford' (Automotive):** Ford, a distinctive personal name, is used as a trademark in the automotive industry.
4. **Device & 'Udhaar' (Financial Technology):** Udhaar, with a unique design or device, serves as a trademark in the field of financial technology.
5. **Number & '4711' (Perfume):** The number 4711 is used as a trademark in the perfume industry.

6. **Picture & Allegator (Knitwear Manufacturing):** The picture of an alligator is used as a trademark in the knitwear manufacturing sector.
7. **Slogan & 'Drink it to believe it' (Soft Drinks):** The slogan "Drink it to believe it" serves as a trademark for a brand in the soft drinks industry.

Note: Trademark Registry Objections and Search :

The Trademark Registry may object to a yet-to-be-registered Trademark if it appears similar in looks or sound to existing registered marks. For example, a keyword like 'Ford' might face objections if similar-sounding terms like Foard, Phord, Fordd, Forrd already exist.

It is advisable to carry out a search for both identical and similar trademarks.

Use the free government portal for trademark searches: <http://ipindiaservices.gov.in/tmrpublicsearch/frmmain.aspx>.

4.35 Trademark Registry

In India, Trademark operations are managed from five cities: Delhi, Mumbai, Ahmadabad, Kolkata, and Chennai. Each city is assigned a group of states, and businesses located in a particular state can 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.

Territorial Jurisdiction of Trademark Registration Offices :

Office Location	States Covered
Mumbai	Maharashtra, Madhya Pradesh, Chhattisgarh, Goa
Ahmedabad	Gujarat, Rajasthan, Daman, Diu, Dadra and Nagar Haveli
Kolkata	Arunachal Pradesh, Assam, Bihar, Orissa, West Bengal, Manipur, Mizoram, Meghalaya, Sikkim, Tripura, Jharkhand, Nagaland, Andaman & Nicobar Islands
New Delhi	Jammu & Kashmir, Punjab, Haryana, Uttar Pradesh, Himachal Pradesh, Uttarakhand, Delhi, Chandigarh
Chennai	Andhra Pradesh, Telangana, Kerala, Tamil Nadu, Karnataka, Pondicherry, Lakshadweep Island

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

4.36 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.

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 (<https://ipindiaservices.gov.in/tmrpublicsearch/frmmain.aspx>).

WIPO's Global Brand Database (<https://www3.wipo.int/branddb/en/>).

Trademark Electronic Search System (TESS) (<http://tmsearch.uspto.gov/bin/gate.exe?f=tess&state=4805:za847u.1.1>).

MARKARIA Trademark Search Engine (<https://trademarksearch.marcaria.com/en/asia/india-trademark-search>).

VAKIL Search (<https://vakilsearch.com/trademarksearch/trademarks?search=bajaj>).

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 :

Filing the Application: 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.

Application Assignment: 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>.

Examination by Professional Examiner: 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.

Publication and Objection Period: 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 unfavourable outcome, the applicant has the right to contest the decision in front of the IPAB. **Trademark Registration Certificate:** Once the application has successfully completed all formalities, a Trademark registration certificate is issued in the name of the applicant.

Language Requirements: One should keep in mind that while filing an application for the registration of a Trademark, an English translation of the non-English words has to be provided.

Priority Claim: If the applicant wishes to claim the priority from an earlier-filed application, he has to provide details like application number, filing date, country, and goods/services of that application.

4.37 Famous Case Law related to Trademarks :

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 the 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.

Question Bank

1. Explain the concept of ‘Copyrights’ and ‘Related Rights’ and how they are categorized under intellectual property. Provide examples of works covered under these rights.
2. Examine the classes(types) of copyrights existing in India, highlighting the types of works covered under each class.
3. Elaborate on the criteria for copyright protection, focusing on the qualifications, originality, and creative effort required. Provide examples to illustrate these criteria.
4. Discuss the ownership of copyright, including the initial owner and scenarios involving employment or government work.
5. Explain the process and requirements for obtaining permission to use copyrighted material. Highlight the factors to be mentioned in a permission request.
6. Distinguish between economic rights and moral rights of copyright owners. Provide examples of activities covered under each type of right.
7. Explore the concept of copyright infringements, listing acts considered as infringements under the Copyrights Act, 1957. Discuss the liabilities of the owner of an auditorium/hall in the context of copyright.
8. Discuss the Fair Use Doctrine and its four-part test. Provide examples of situations where the Fair Use Doctrine may be applicable.

9. Examine the challenges posed by the digital era in the context of copyrights. Discuss the implications of internet use on copyright and the inclusion of computer programs in literary works.
10. Explain the concept of automatic copyright protection. What rights does the creator obtain upon the act of creation?
11. Discuss the role of copyright registration. How does the certificate of registration serve as prima facie evidence in legal disputes?
12. Describe the prominent forms used for copyright registration in India. Explain the information required in Form No. XIV.
13. Outline the judicial powers of the Registrar of Copyrights. In what situations can the Registrar exercise powers similar to a civil court?
14. Explain the process of copyright application submission in India. What are the options for submitting the application, and who is eligible to file the application?
15. Discuss the time frame and steps involved in the evaluation of a copyright application. How are objections handled during the evaluation process?
16. Provide details on the fee structure for copyright registration in India. Include information on different types of works and their corresponding fees.
17. Examine the significance of copyright symbols. What elements can be included as a copyright mark on creative works?
18. Discuss the validity period of copyright in India. What factors determine the starting point of this validity period?
19. Analyze the copyright profile of India based on a five-year study. Highlight trends in the number of applications and registrations during this period.
20. Discuss the legal controversy surrounding the "David vs. Macaques" Copyright case in Indonesia, 2011. Analyze the settlement reached between David Slater and People for the Ethical Treatment of Animals (PETA).
21. Examine the legal history and settlement of the "Happy Birthday to you" case, highlighting the origins of the song and the Copyright issues involved. Discuss the implications of the song entering the public domain.
22. Explore the future Copyright implications for the works of Harivansh Rai Bachchan, the father of Amitabh Bachchan. Analyze the provisions of the Copyright Act, 1957, and discuss the rights duration as per the Act.
23. Explain the eligibility criteria for trademarks, emphasizing distinctiveness, descriptiveness, and similarity to prior marks. Provide examples to illustrate these criteria.
24. Discuss the concept of collective marks and provide an example, such as the use of the 'Reliance' symbol. Explain how organizations or associations can file for and use collective marks.
25. Explore the acts and laws governing trademarks in India, focusing on The Trademarks Act, 1999, and Trademarks Rules, 2002. Highlight the key amendments made in 2010 and 2017.
26. Examine the classification of trademarks under the 'Nice Agreement' and provide examples of goods and services falling under different classes.

27. Discuss the significance of trademark symbols, including  ,  , and  . Explain the legal implications and protection associated with each symbol.