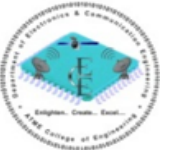




A T M E
College of Engineering



Module-4

- **Copyrights and Related Rights:** Classes of Copyrights. Criteria for Copyright. Ownership of Copyright. Copyrights of the Author. Copyright Infringements. Copyright Infringement is a Criminal Offence. Copyright Infringement is a Cognizable Offence. Fair Use Doctrine. Copyrights and Internet. Non-Copyright Work. Copyright Registration. Judicial Powers of the Registrar of Copyrights. Fee Structure. Copyright Symbol. Validity of Copyright. Copyright Profile of India. Copyright and the word 'Publish'. Transfer of Copyrights to a Publisher. Copyrights and the Word 'Adaptation'. Copyrights and the Word 'Indian Work'. Joint Authorship. Copyright Society. Copyright Board. Copyright Enforcement Advisory Council (CEAC). International Copyright Agreements, Conventions and Treaties. Interesting Copyrights Cases.
- **Trademarks:** Eligibility Criteria. Who Can Apply for a Trademark. Acts and Laws. Designation of Trademark Symbols. Classification of Trademarks. Registration of a Trademark is Not Compulsory. Validity of Trademark. Types of Trademark Registered in India. Trademark Registry. Process for Trademarks Registration. Prior Art Search. Famous Case Law: Coca-Cola Company vs. Bisleri International Pvt. Ltd.

COPYRIGHTS AND RELATED RIGHTS

- 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 work in the fields of dramatics, sound recording, film/video recordings, paintings, architecture, etc.
- 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.

CLASSES OF COPYRIGHTS

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

CRITERIA FOR COPYRIGHT

1. The work must be in physical or tangible form

- The work must exist in some visible or recordable way — written, recorded, drawn, saved on a computer, etc.
- It can't just be an idea in your head; it has to be expressed somehow. Example: A poem written on paper qualifies, but just thinking of the poem doesn't.

2. Duration of the work doesn't matter

- It doesn't matter whether the work exists for a few minutes or for many years — it can still get copyright. Example: Even a temporary art piece or a live performance can be protected.

3. Any form of expression that can be seen or heard can qualify

- Anything you can look at or listen to can be copyrighted — writings, music, videos, art, etc. Even rough notes written in a hurry for a speech can be protected.

4. The work must be original

- The work should come from **your own thinking**, not copied from someone else.
- It's called an **Original Work of Authorship (OWA)**. It can look similar to other works, but it shouldn't be an exact copy.

5. Quality doesn't matter

The work doesn't have to be beautiful, big, or perfect — even a simple or imperfect creation can be copyrighted.

Example: A child's drawing is still protected, even if it's not professional art.

6. There must be some creativity

The author must put at least **some creative effort** into the work. There's no fixed level of creativity — it's judged case by case.

The Copyright Office decides if something is creative enough.

Examples that don't get copyright

Simply changing the size of a book (like from A4 to A5) — no creativity.

A plain list of phone numbers in alphabetical order — no creativity, just information arranged systematically.

OWNERSHIP OF COPYRIGHT

➤ The creator is the first owner

The person who creates the work (like writing a poem, painting, composing music, etc.) automatically becomes the **first owner** of the copyright.

➤ If you create something as part of your job

If an employee makes a work **for a company or organization**, then the **company (proprietor)** — not the employee — is the **copyright owner**.

Example: If a designer makes a logo for a company as part of their job, the company owns it.

➤ Government works

If the work is created by someone working for the **government**, and there is no special agreement, then the **government** owns the copyright.

➤ For speeches

The person who gives the speech is the first owner of the copyright in that speech.

How to get permission to use someone else's copyrighted material

If you want to use material that someone else owns (like copying text, showing a video, or reproducing a photo), you need to **ask permission from the legal owner**.

The legal owner could be:

- The **original author**

- The **legal heir** (if the author has passed away)

- The **publisher** or **organization** that holds the rights

Your permission request should include:

When asking for permission, clearly mention:

- Title, author/editor, and edition** – what work you're referring to

- Exact part you'll use** – e.g., "Chapter 2" or "pages 15–20"

- Number of copies** – how many times it will be reproduced

- Purpose** – e.g., for teaching, research, or commercial use

- How you'll distribute it** – e.g., printed copies, posted online, shared in class

- Whether it will be sold** – e.g., part of a paid course pack or free educational material

1. Copyright protection

- The **Copyright Act, 1957 (Section 14)** protects the rights of authors or creators.
- This means **no one can use, copy, or publish** the author's work **without permission**.

2. Exclusive rights of the author

- The author alone has full control over **how their work is used, shared, or sold**.
- These rights are grouped into two types:
 - **Economic Rights (money-related rights)**
 - **Moral Rights (personal rights of respect and recognition)**

3. Economic Rights (Proprietary Rights)

These deal with **money or commercial benefits**. The author can **allow or stop others** from doing the following:

- **Reproducing** the work (e.g., copying a book, making a recording).
- **Distributing** copies (selling, sharing, or giving away copies).
- **Performing** the work publicly (like acting out a play or singing a song in a concert).
- **Broadcasting or communicating** the work to the public (like showing a movie on TV or online).
- **Translating** the work into another language.
- **Adapting** the work (like turning a novel into a movie or a poem into a song).

These rights can earn the author **money** when the work is used by others.

4. Moral Rights (Personal Rights)

These protect the **author's personal connection and reputation** related to the work.

There are two main moral rights:

a) Right of Paternity

Even if the author gives or sells the copyright to someone else (like a publisher), the **author's name must still be shown**.

Example: A writer sells the rights to a publisher, but their name must still appear on the book.

b) Right of Integrity

The author can stop others from **changing or misusing** the work in a way that harms their reputation.

Example: If someone edits or changes the story in a way that misrepresents the author's idea, the author can object.

5. More than one rights holder

A single work can have **many people sharing copyright**.

Example: For a song —

- The **lyricist** (writes words)
- The **composer** (creates music)
- The **singer**
- The **musicians**
- The **sound recorder** — all may hold copyright in different parts of the same song.

“Copyright infringement” means **using someone else’s copyrighted work without their permission** — in a way that **violates their legal rights**. It’s basically **copying, selling, or sharing someone’s work illegally**.

According to the Copyright Act, 1957, these actions are considered copyright infringement:

➤ **Making or selling copies without permission**

Example: Photocopying a book and selling it or making duplicate CDs/movies to sell or rent.

➤ **Allowing a place to be used for illegal performances**

Example: Letting someone perform a play or song in your hall when they don’t have permission from the copyright owner.

➤ **Distributing illegal copies for profit**

Example: Sharing pirated software, songs, or movies that hurt the original creator’s earnings.

➤ **Showing illegal copies in public**

Example: Exhibiting a pirated movie or artwork publicly to make money.

➤ **Importing pirated copies**

Example: Bringing in fake DVDs, books, or software from another country to sell.

➤ **Translating without permission**

Example: Translating a novel or article into another language and publishing it without asking the author.

COPYRIGHT INFRINGEMENT IS A CRIMINAL OFFENCE

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

COPYRIGHT INFRINGEMENT IS A COGNIZABLE OFFENCE

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

- ❑ Normally, you **cannot use someone else's copyrighted material** (like a book, video, image, or song) **without permission**. But under the **Fair Use Doctrine**, the law allows **limited use** of copyrighted materials **for educational or research purposes — without needing permission**. So, if the use is **fair** and **non-commercial**, it's not considered copyright infringement.

- ❑ **Four conditions (the 4-part test) to decide if something is Fair Use**
 - **Nature of the use**
The use must be for **education, research, learning, or personal use**, not for profit or business.
Example: A teacher using a paragraph from a textbook in a classroom presentation.
 - **Nature of the work**
The work used should be **factual or informative**, not creative or imaginative like stories, poems, or songs.
Example: Using a fact from a research article is more acceptable than copying a story.
 - **Amount used**
You can use **only a small portion** of the copyrighted work.
Using large or important parts of the work may **not** be considered fair use.
Example: Quoting a few lines from a book — okay; copying entire chapters — not okay.
 - **Effect on the market value:**
If your use **doesn't harm the author's income** or reputation, it is fair.
Example: Sharing a short excerpt for class notes won't affect the book's sales.

❑ Examples of Fair Use

Using **short quotations** in your own writing.

News reporting current events in newspapers, TV, or radio.

Teachers or researchers reproducing parts of a work for study or instruction.

Use of material by the **Secretariat of a Legislature** (official government documents).

1. Copyright in the digital age

Nowadays, most content is **digital** and shared quickly over the **internet**. Because of this, **Copyright laws have been updated** to handle digital content.

2. Be careful when using online material

You must **follow copyright and fair use rules** when downloading or using material from the internet. Just because something is online **doesn't mean it's free to use** — it may have been posted **without the author's permission**.

3. Personal vs. commercial use

If the **copyright owner puts material online**, you can usually use it **for personal, non-commercial purposes** (like learning or research). **You cannot use it for business or profit** without permission.

4. Warning for electronic distribution

When sharing copyrighted material digitally, it should include a notice like: “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.” This warns users that **illegal use can lead to punishment**.

5. Computer programs are copyrighted

Under **Section 2(o) of the Copyright Act, 1957**, literary works include:

Computer programs

Databases

Tables and compilations

When registering a copyright for a program, you must provide **both the Source Code and Object Code**

NON-COPY RIGHT 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, an author of a book on –Buddhism|| takes ten-fifteen years to gather all the necessary materials and information for his work. At a great expense, the author travels to various museums, libraries and excavations sites. However, after the book is published, anyone is free to use the underlying facts, provided they express the information on their own.
- Copyright does not protect titles, names, slogans, short phrases, short word combinations, methods, or factual information.
- Certificates are not considered as Copyrightable subject matter as there is not much scope for creativity.
- 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
- Using someone else's picture, song or video from the internet without permission constitutes Copyright infringement. Similarly using someone else's material for you own purpose is also considered an infringement.

•.

➤ **Automatic Copyright**

You **do not need to register** your work to get copyright. The moment you **create something original** (like a book, song, painting, or software), it is **automatically protected by copyright**.

➤ **Registration is optional**

You **don't have to submit a formal request** to the Copyright Office to get rights. Registration **does not give you copyright** — you already have it when you create the work.

➤ **Purpose of registration**

Registration is useful because it provides **prima facie evidence** — meaning: It is **proof in court** that you are the **author/owner** of the work. It helps in disputes about **ownership, financial rights, or transfer of rights**.

➤ **Why it's advisable to register**

While not mandatory, registering your work **makes legal protection easier** if someone else copies or claims your work.

➤ **Legal framework in India**

Copyrights and registration in India are governed by:
Copyright Act, 1957 and Copyright Rules, 2013

Role of the Registrar of Copyrights

The **Registrar** is an official who **handles copyright registration and disputes** in India. When dealing with copyright cases, the Registrar has **powers similar to a civil court** under the Civil Procedure Code.

Powers of the Registrar

The Registrar can:

- Summon people** and make them attend or give statements under oath.

- Ask for documents** or proof related to the case.

- Accept evidence on affidavit** (a written statement sworn to be true).

- Order examination of witnesses or documents** through commissions.

- Request public records** from courts or offices.

- Handle **other matters** as prescribed by law.

Registration process timeline

Usually, it takes **2–3 months** to register a work.

There is a **mandatory waiting period of 30 days** after applying.

Handling objections

If someone **objects to your copyright application**, they can inform the Registrar.

The Registrar gives **both sides a hearing** before deciding the case.

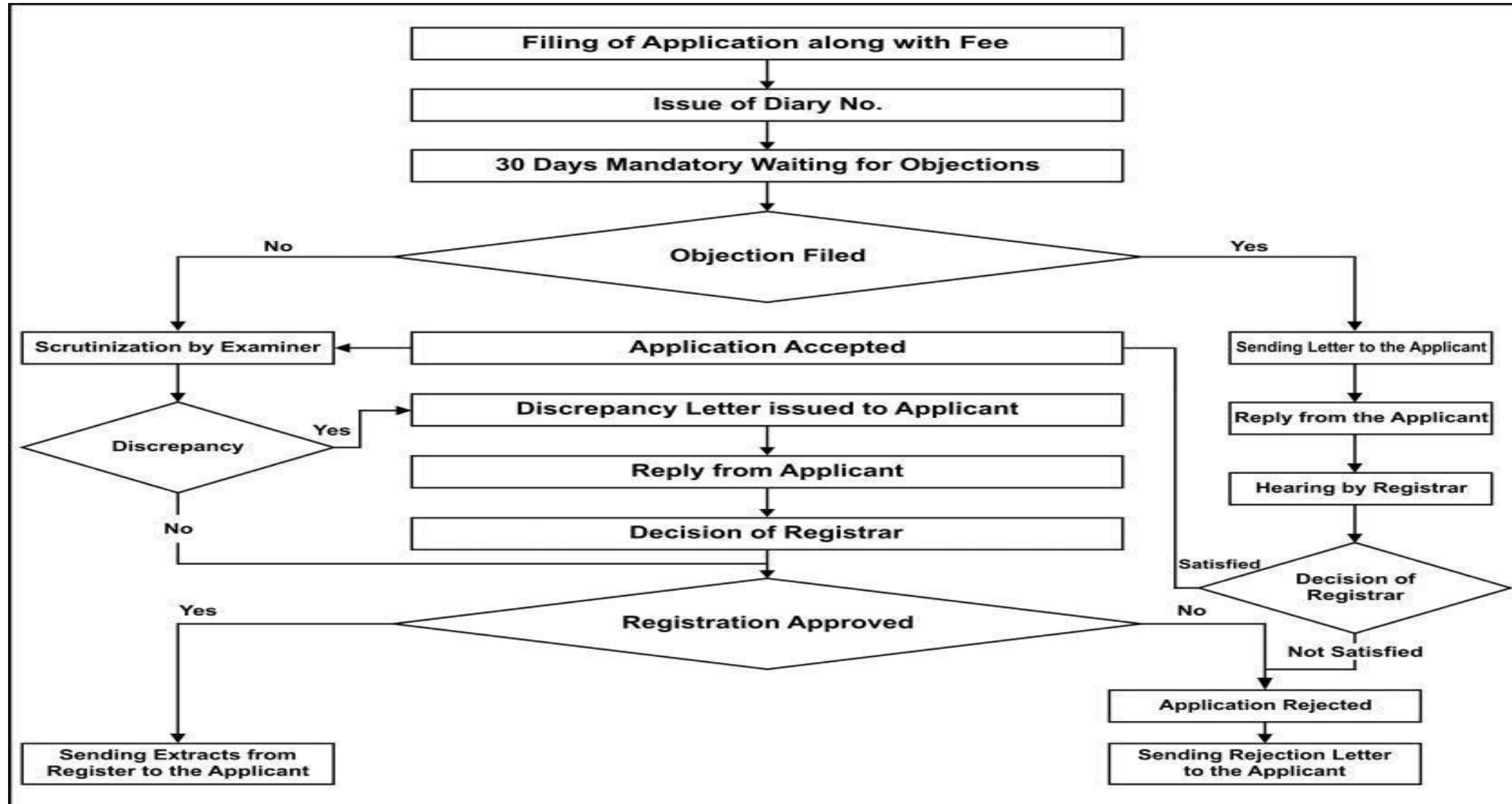
If the Registrar has **questions or doubts**, the applicant is given around **45 days** to clarify them.

After objections are cleared

The application is then **evaluated by examiners**.

Once everything is cleared, the copyright registration is granted.

Process of Copyright Registration



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.

Sl. No	Particulars	Fee in Rs
1	For an application for registration or Copyright Literary, Dramatic, Musical or Artistic work	500
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 in relation to 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 in relation to 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

What is a Copyright Symbol?

The **copyright symbol (©)** shows that a work — like a book, song, photo, or video — is **protected by copyright law**.

It tells others: “This work belongs to someone; don’t copy or use it without permission.”

Is it necessary to use ©?

No, it’s **not compulsory** to put the © symbol on your work — copyright protection automatically exists as soon as you create something original.

But if you **do** use it, it becomes **easier to prove ownership** in court if someone copies your work.

What to include when you use a copyright mark

If you decide to show a copyright notice on your work, you usually include three parts:

1. **The symbol:** © (for normal works) or ® (for sound recordings like songs).
2. **The year** the work was first published.
3. **The name** of the copyright owner (the creator or company).

Special cases

For collections or edited works (like anthologies or remix albums), you mention the **year the collection** was published.

For some artistic works (like greeting cards, jewellery, toys, etc.), you can **skip the year** if you wish.

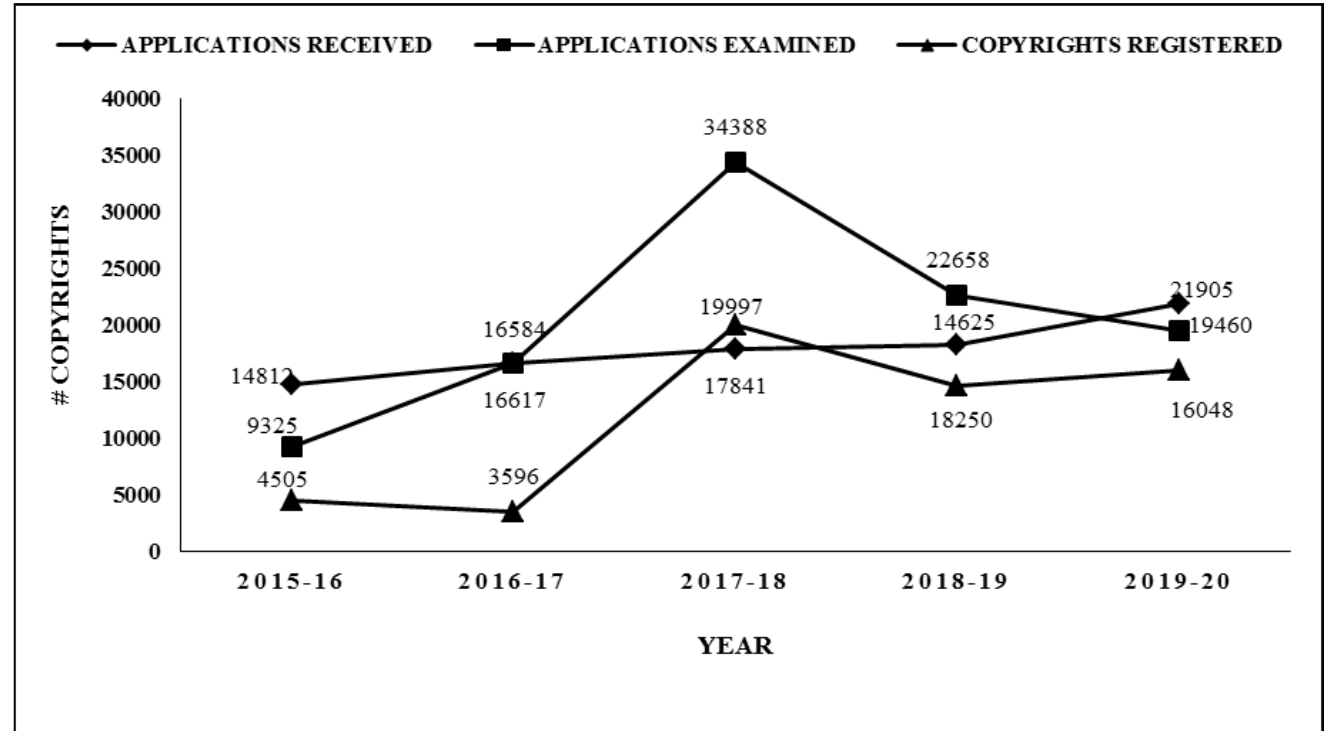
Element	Meaning	Example
©	Copyright symbol for written/visual works	© 2025 Swetha
®	Symbol for sound recordings	® 2025 Swetha Studios
Year	When the work was first made public	2025
Name	Owner of the copyright	Swetha

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 organizations').

• COPYRIGHT PROFILE OF INDIA

- A comparative five years (2015-20) study revealed a gradual increase in the number. Copyright applications in the first four years of the study, with a maximum number of applications (21,905) recorded in the 2019-20 period.
- 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.



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

➤ **Creators may give rights to publishers:**

- ✓ Authors often transfer their copyright to publishers so that their work can reach a wider audience.
- ✓ In return, they receive money — either a **lump sum, royalties, or both**.

➤ **Full transfer can cause problems:**

- ✓ If the author gives away **complete copyright**, they may lose control over their own work.
- ✓ The publisher might:
 - Stop the author from sharing or displaying it elsewhere.
 - Restrict the author from making changes.
 - Only print limited copies or not release a digital version.

➤ **Be careful with publishing agreements:**

- ✓ Authors should **read contracts carefully** before signing.
- ✓ They can make agreements that give publishers certain rights (like printing) while keeping other rights (like digital rights) to themselves.

➤ **Authors can keep some rights:**

- ✓ Contracts can be written to let publishers sell **hard copies** only.
- ✓ The author can still control **online or digital publication**.

➤ **Digital age gives more control:**

- ✓ Today, authors can publish their work online, reducing dependence on traditional publishers.
- ✓ But if they already signed a strict publishing contract, they may not enjoy this freedom.

➤ **Right to reclaim copyright:**

- Even if an author gives exclusive rights to a publisher, the **Copyright Act** allows the author to **take back their rights after 35 years**.
- ✓ This is called “**termination of transfer**.”

➤ **Final advice:**

- ✓ Authors should **carefully consider and understand** copyright agreements before signing to protect their creative rights.

In the world of Copyright, the word Adaptation refers to the development of a new work derived from an existing one.

The Copyright Act defines the following actions as constituting adaptations:

- Converting a dramatic work into a non-dramatic work.
- Transforming a literary or artistic work into a drama.
- Rearranging a literary or dramatic work.
- Representing a literary or dramatic work through images.
- Creating a cinematograph film based on a literary or dramatic or musical work.

For example:

- Turning a **play (drama)** into a **story or novel** → adaptation.
- Changing a **story or book** into a **play or movie script** → adaptation.
- **Rearranging or modifying** a story or play → adaptation.
- Showing a **story through pictures or drawings** → adaptation.
- Making a **movie** based on a book, song, or drama → adaptation.

COPYRIGHTS AND THE WORD 'INDIAN WORK'

The term “**Indian work**” in copyright means a creation (like a book, song, play, or poem) that has a connection with **India**.

It is called an **Indian work** if:

- 1.The **author is an Indian citizen**, or
- 2.The **work was first published in India**, or
- 3.If the **work is not yet published**, the **author was an Indian citizen** when it was created.

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 distinguishable from the contribution of the other author or authors.

- Authors, musicians, and filmmakers often can't keep track of how their works are being used or collect their royalties.
- To solve this problem, **Copyright Societies** were created (**as per Section 33 of the Copyright Act, 1957**):
- A **Copyright Society** is a registered organization formed by authors and copyright owners to manage their rights collectively.
- **Functions of a Copyright Society:**
 - **Monitor** how and where members' works are used.
 - **Issue licenses** to those who want to use the works legally.
 - **Collect license fees (royalties)** from users.
 - **Distribute the collected fees** among the owners after deducting administrative expenses.
- A Copyright Society can be formed by **seven or more copyright holders**.
- Its **registration is valid for five years**.

Examples of Registered Copyright Societies in India:

- **SCRIPT (Society for Copyright Regulation of Indian Producers** for film and television).
- **IPRSL (Indian Performing Right Society Limited)** – for musical works.
- **PPL (Phonographic Performance Limited)** – for sound recordings.

- The **Copyright Board** is a **government body** that handles **copyright-related legal issues** in India. It works like a **court** for copyright matters.
- The Board has a **Chairman** and **2 to 14 members**. The **Chairman** is a person with the same status as a **High Court Judge**.
- **Main Powers and Functions:**
 - Hear appeals:** Looks into appeals against decisions made by the **Registrar of Copyrights**.
 - Correct mistakes:** Can **change or correct entries** in the Register of Copyrights if there are errors.
 - Settle disputes:** Solves **disagreements** between people about the **ownership or transfer (assignment)** of copyrights.
 - Issue compulsory licenses:** Gives permission to **publish or republish** a work in special cases when the owner is not available or refuses permission.

Special powers:

- Can **allow translation** of a literary or dramatic work into another language **after 7 years** from its first publication.
- Can **decide disputes** about:
 - Whether a work has been published or not.
 - The **date of publication**.
 - The **copyright period** of a work published in another country.
- Can **fix royalty rates** for **sound recordings** (for example, when someone makes a cover version of a song).
- Can **decide resale royalty rights** for **original artworks** (like paintings, sculptures, or manuscripts).

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.

A **trademark** is a **unique sign, word, logo, symbol, design, or combination of these** that helps people **identify your product or service** as coming from a particular company or person.

It's like a **name tag** for your brand — it tells customers, *"This belongs to us!"*

Simple definition:

A **trademark** is something that **makes your brand stand out** from others and **protects it from being copied**.

Examples:

Logos: Nike's ✓ (swoosh), Apple's

Brand names: Coca-Cola, Samsung, McDonald's

Taglines: "Just Do It" (Nike), "I'm Lovin' It" (McDonald's)

Shapes or sounds (sometimes): The shape of a Coca-Cola bottle or the Intel jingle

Why trademarks are important:

They **protect your brand identity** legally.

They help customers **recognize your products easily**.

They **prevent others from using** a similar name or logo that could confuse buyers.

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

1. Distinctiveness

- The trademark must be **unique** so that people can identify your product or service easily.
- It should make your brand stand out from others.

Example:

If you sell shoes and name your brand “**Zylo**”, it’s distinctive because no one else uses that name. But if you just call it “**Shoes Brand**”, that’s not unique — anyone could use it.

2. Descriptiveness

- The trademark **should not directly describe** what the product or service is.
- If it simply tells what the product does, it won’t get protection.

Example:

“Apple” as a name for electronic gadgets is fine — it doesn’t describe computers or phones. But “Fresh Apples” for selling apples would not be accepted — it just describes the product itself. However, if a descriptive name becomes famous and people start linking it to a brand (this is called **secondary meaning**), it can still get protection.

3. Similarity to Prior Marks

- Your trademark must not be **too similar to existing trademarks**.
- If it looks or sounds like another brand, it can confuse people and won’t be accepted. **Example:** If “Coca-Cola” is already registered, you can’t register “Koka-Kola” because it sounds too similar.

Who can apply for a Trademark?



A **trademark** can be applied for by **any person, group, or organization** that owns or wants to use a brand name, logo, or symbol for their goods or services.

1. Individual (Single Person)

- If you **create or own a brand**, you can apply for a trademark in your own name.

Example: If **Ravi** starts a company called *Ravi's Chocolates*, he can apply for a trademark for that brand name.

2. Two or More People (Joint Owners)

- Sometimes, a trademark is owned by **more than one person** (like business partners).

- They can **apply together** for the trademark.

- They must also submit documents showing they both share ownership.

Example: If **Ravi and Sita** start a brand called *RS Fashion*, they both can apply together for the trademark.

3. Organization or Association (Collective Mark)

- A **group, company, or association** can apply for a **collective trademark**.

- This means the trademark can be used by **all its members**, but it still belongs to the organization.

Example: The “**Reliance**” logo — any product or service under Reliance Industries uses this symbol, but it belongs to the organization, not an individual employee.

1. The Law that Controls Trademarks in India

- ☐ In India, **trademarks** are protected by a law called “**The Trademarks Act, 1999.**”
- ☐ This Act explains **how to register, use, and protect** a trademark.
- ☐ It also gives **legal rights** to the owner and describes what happens if someone **copies** a trademark.
- ☐ **Think of it like a rulebook** that says: “If you want to own a brand name or logo legally, follow these rules.”

2. Trademark Rules, 2002

- ☐ These are the **detailed guidelines** that tell you *how* to follow the Act.
- ☐ They explain things like:
 - How to apply for a trademark
 - What forms to fill
 - What fees to pay
 - What procedures to follow

Example: If the Act says “*You must register your mark,*” the Rules explain “*Here’s how to do it.*”

3. Amendments (Changes Over Time)

- The law is **updated from time to time** to make it better and more relevant.
- The **Trademark Act** and **Trademark Rules** have been changed (amended) in **2010** and **2017**.
- These updates made the registration process **simpler and faster** and included **online filing options**.

4. Office in Charge (Who Manages All This)

- All trademark-related work is handled by a government office called
“Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM)” under the **Government of India**.
- This office manages trademark registration, maintains records, and resolves disputes.

1. TM (TM) – Trademark symbol

- ✓ This symbol **shows that the brand name or logo is used as a trademark**, but it is **not yet registered** with the government.
- ✓ You can use TM while your application is still in process, or even before applying.
- ✓ It helps tell people — “This is my brand!”
- ✓ **Used for:** Goods or products **Example:** If you start a soap brand called “**GlowFreshTM**”, it means you’re claiming it as your brand name, even if it’s not yet officially registered.

2. SM (SM) – Service Mark symbol

- ✓ This is similar to TM but used for **services instead of products**.
- ✓ It also means the brand is **not registered** yet.
- ✓ **Used for:** Services like hotels, teaching, consulting, etc. **Example:** If you own a cleaning service called “**SparkleCleanSM**”, you can use SM to show it’s your service brand.

3. ® (R) – Registered Trademark symbol

- ✓ This symbol means your **trademark has been officially registered** with the government (in India, under the Trademark Act, 1999).
- ✓ You can **only use this after registration is approved**.
- ✓ It gives you **legal protection** — no one else can use your brand name or logo.
- ✓ **Used for:** Both goods and services **Example:** “**Nike®**” — the brand name and logo are officially registered, and legally protected.

1. What is Trademark Classification?

- When people or companies apply for a **trademark**, they have to say **what type of goods or services** their brand is used for.
- To make this process the same across all countries, the **Nice Agreement (1957)** created an **international classification system** for trademarks.
- This classification helps organize all goods and services into **different “classes”** — so that trademarks for different types of products can be easily identified and registered.
- **Example:** If one company makes “chocolates” and another makes “mobile phones”, both can have the same brand name (for example, “Galaxy”), because they belong to **different classes** — chocolates and phones don’t compete with each other.

2. Who Created and Manages It?

- The system is created under the **Nice Agreement (1957)**.
- It is managed by **WIPO (World Intellectual Property Organization)** — a United Nations agency that deals with global intellectual property matters.
- Around **149 countries** (including India) use this same classification system, so the rules are globally uniform.
- This makes trademark protection **easier across countries**.

3. How Many Classes Are There?

- There are **45 total classes**:
- **Classes 1 to 34** → For **Goods (physical products)**
- **Classes 35 to 45** → For **Services**
- Each class represents a particular **type of product or service**.

Why this matters:

When you apply for a trademark, you must **choose the correct class** that matches what your business sells or provides.

If your business deals with both goods and services, you may need to apply under **multiple classes**.

4. Example Classes Explained

- **Class 1 – Chemicals**
 - ✓ This class includes **chemicals used in industry, science, and agriculture**, such as:
 - ✓ Industrial chemicals
 - ✓ Artificial resins and unprocessed plastics
 - ✓ Fire extinguishing materials
 - ✓ Fertilizers, compost, and manures
 - ✓ Glues for industrial use

Example products: Adhesives, fertilizers, lab chemicals, or tanning agents.

➤ **Class 45 – Legal and Security Services**

This class includes **services** related to:

- ✓ **Legal services** (lawyers, legal consultation)
- ✓ **Security services** (guards, CCTV monitoring, protection)
- ✓ **Personal and social services** (like matchmaking, spiritual counseling, etc.)
- ✓ **Example services:** Law firms, private security agencies, or detective services.

5. Why Classification Is Important

- It **helps avoid confusion** between unrelated businesses using the same name.
- It **defines the scope of protection** for your brand — meaning your trademark is protected **only** in the class(es) you register it in.
- It **simplifies the registration process** internationally since all countries use the same numbering system.

Registrations of a Trademark is Not Compulsory



1. Trademark Registration is Optional — Not Mandatory

- In India (and many countries), you **don't have to register** your trademark to use it.
- You can still **use a name, logo, or symbol** for your business without registering it.
- However, **if you register** it, you get **stronger legal rights and protection**.
- So while registration is **not compulsory**, it is **highly recommended**.

2. Advantages of Registering a Trademark

(a) Legal Protection

- When your trademark is **registered**, you become the **legal owner** of that mark.
- This means **no other person or company can use your brand name, logo, or symbol** without your permission.
- If someone tries to copy or misuse your brand, you can **take legal action** easily.
- In court, your **registration certificate acts as proof** that you own the mark.
- **Example:** If your registered brand is "*GlowFresh®*" and another company starts selling soaps called "*GlowFres*", you can **legally stop them** and protect your brand reputation.

(b) Exclusive Right

- Registration gives you **exclusive rights** to use your trademark.
- That means **only you** can use it for your products or services in the registered class.
- You can also **license** or **franchise** your trademark to others and **earn royalties**.
- **Example:** McDonald's owns its registered logo and brand name and allows others (franchisees) to use it — but only with permission.

(c) Brand Recognition

- A registered trademark helps people **easily recognize** your brand among competitors.
- Over time, your logo or name builds **trust and loyalty** — customers start associating quality and reliability with your brand.
- This **creates brand value and goodwill**, which helps attract new customers and retain existing ones.
- **Example:** When people see the **Apple logo**, they immediately think of premium electronic gadgets — that's brand recognition built through a registered trademark.

(d) Asset Creation

- A **registered trademark** is considered an **intangible asset** of your business (meaning it's valuable even though it's not physical).
- Like land or machinery, it can be:
 - **Sold, transferred, franchised, or licensed**
 - Used to **raise business value** or attract investors
- **Example:**
If your brand becomes famous, you can **sell the trademark** to another company for a high price — just like selling property.

1. How long is a Trademark valid in India?

- When you register a trademark in India, it is **valid for 10 years** from the date of registration.
- This means you have **exclusive rights** to use your brand name, logo, or symbol for **10 years**.
- **Example:** If you registered your brand in **2025**, it will be valid till **2035**.

2. Can it be renewed?

- Yes! You can **renew it every 10 years**, again and again — there's **no limit**.
- So, your trademark can stay valid **forever**, as long as you keep renewing it on time.
- This is why some old brands (like Coca-Cola or Nike) still have the same trademarks — they keep renewing them regularly.
- **So, it's not a one-time registration — it's a renewable right that can last for life.**

3. Renewal Process

- To renew your trademark, you have to file a **renewal application** with the Trademark Office.
- This is done using a **specific form called "Form TM-R."**
- You must submit this **within one year before your current registration expires**.
- **Example:** If your trademark expires on **15th June 2035**, you should file the **renewal form (TM-R)** anytime **between 15th June 2034 and 15th June 2035**.

4. What happens if you forget to renew?

- If you don't renew it, your trademark **can be removed from the register**.
- However, you may get a short **grace period (6 months)** to restore it by paying an extra fee.
- If you still don't renew it, you **lose your ownership rights** — someone else could even apply for it.

A **trademark** can take many forms — it can be a **word, name, logo, symbol, or even a combination** of these. But to be accepted and registered in India, it must be **unique, creative, and easy to recognize**.

1. Trademark as a Word

- ✓ A trademark can be a **word** that people can **say, spell, and remember easily**.
- ✓ It should help people **identify your brand**.
- ✓ Example: *TATA, AMUL, NIKE, DETTOL* — these are all words people recognize as brands.

2. Choose Invented or Unique Words

- ✓ It's better to use a word that is **made-up (invented)** or **unique** — not something common.
- ✓ You can even use a **special geographical name** that no one else uses.
- ✓ Example: “**Zomato**” or “**Kodak**” are invented words — they have no dictionary meaning but are easy to remember.
- ✓ **Why invented words?** Because they are **distinctive**, so it's easier to get them registered and protected legally.

3. Avoid Common or Descriptive Words

- ✓ You should **not use**:

Common geographical names – e.g., “Delhi Shoes” or “India Textiles” (too general).

Common personal names – e.g., “Ravi Bakery” (many people might have that name).

Praising or descriptive words – e.g., “Best”, “Perfect”, “Super” — these only describe quality and are **not unique**.

Example: “Perfect Soaps” or “Super Detergent” — such words are **too ordinary** and can't be protected easily.

4. Importance of Market Survey

- ✓ Before choosing a trademark, it's smart to **check if someone else is already using it**. You can do this by searching the **Trademark Database** (available on the Indian IP website). This helps you avoid **conflicts or rejection** during registration.

5. Examples of Registerable Trademarks

- ✓ **a) Name (Personal or Surname)**

You can use your **own name or signature** as a trademark.

Example: **"BAJAJ"** – named after **Mr. Jamnalal Bajaj**, founder of Bajaj Group.
The name became a powerful brand for vehicles and appliances.

- ✓ **b) Unrelated Word**

You can use a word that has **no direct link to the product or service**.

Example: **"INDIA GATE"** – used for *food grains* (like rice).
The name doesn't describe rice, but it's distinctive and memorable.

- ✓ **c) Letters, Numbers, or Combinations**

You can register **letters, numbers, or combinations** that represent your brand.

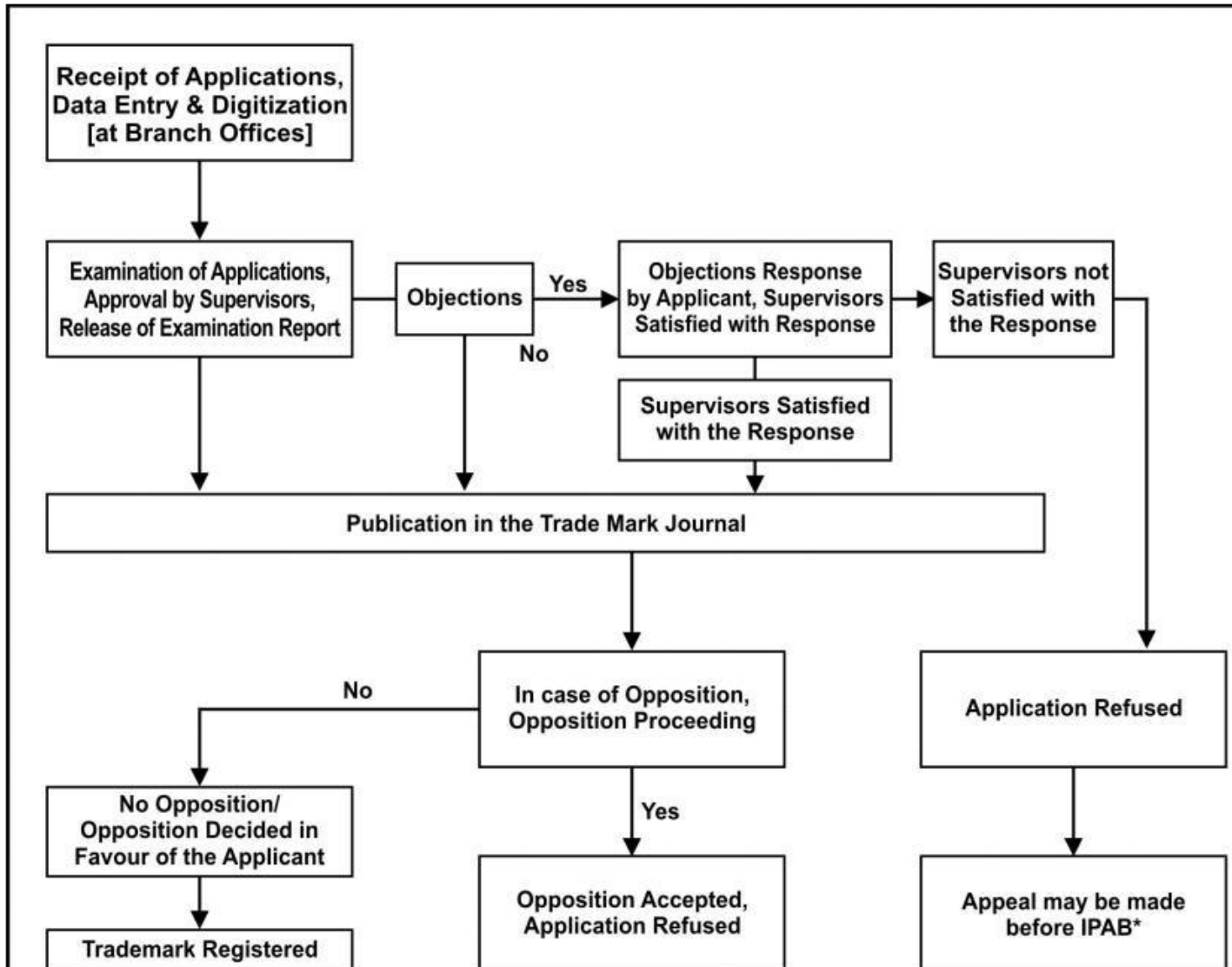
Example: **"YAHOO!"** — It originally stood for "Yet Another Hierarchical Official Oracle," but now it's a unique brand name for an internet company.

TRADEMARK REGISTRY

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

Sl. No	Office location	States included
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.

Process of Trademark Registration



**Note: If decision of IPAB is in favour of applicant, procedure is followed for the registration of Trademark. As per notification of Delhi High Court (2021), IPAB is abolished and a dedicated IP Division has been created to deal with IP issues.*

The process starts when you file an application and ends either with the **registration** of the mark (good outcome) or **refusal** (bad outcome). Along the way the application is **examined**, may receive **objections**, is **published** for public scrutiny, and can face **opposition** from third parties. The chart also shows what happens if objections or oppositions are resolved or not.

1. Receipt, data entry & digitization (branch offices)

- ✓ Your application (forms, specimen/logo, identity proof, power of attorney if needed, and fee) is **received** by the Trademark Office (or a branch office).
- ✓ The application is **entered into the system** and digitized for processing.
- ✓ This is just the intake step — it does not mean the mark is examined yet.

What you should do: Keep a copy of the filed application and the filing number. Make sure contact details are correct.

2. Examination of the application and release of examination report

- ✓ A trademark examiner reviews the application against legal requirements: distinctiveness, descriptiveness, similarity to prior marks, correct class, formalities etc.
- ✓ The examiner prepares an **Examination Report**. That report may contain:
- ✓ **No objections** (clear) → proceed toward publication.
- ✓ **Objections** (absolute or relative grounds) → applicant must respond.

3. If objections are raised

- ✓ The Examination Report is communicated to the applicant, listing specific objections.
- ✓ Two possible branches:
 - a) Applicant responds to objections**
 - ☐ The **applicant files a reply** (e.g., arguments, evidence of prior use, disclaimers, or amended representations).
 - ☐ The examiner (or supervisor) reviews the response:
 - ☐ If the **supervisors are satisfied** with the applicant's reply, the application proceeds to **Publication in the Trade Mark Journal**.
 - ☐ If the **supervisors are not satisfied** with the reply, the application is **refused** at this stage.
 - b) Applicant fails to respond / or response not adequate**
 - ☐ Application may be refused; applicant can later explore appeal routes.

Tip: Respond carefully to objections with legal arguments and evidence (use distinctiveness proof, use affidavits, or accept disclaimer) — many applications clear this stage with a good response.

4. Publication in the Trade Mark Journal

- ✓ Once the examiner is satisfied, the application is **published** in the official Trade Mark Journal.
- ✓ Publication puts the mark on **public notice** so anyone can see a pending application and decide whether it conflicts with their rights.
- ✓ **Purpose:** To allow third parties to oppose the registration if they believe it infringes their existing rights.

5. Opposition period (if any party objects after publication)

- ✓ After publication, there is a window during which **third parties** may file an **opposition** against the registration.
- ✓ Two possible outcomes:

a) No opposition (nobody objects)

If nobody opposes, or if any opposition is decided in favour of the applicant (i.e., opposition dismissed), then the **Trademark is Registered**.

Registration leads to a certificate and the start of statutory protections.

b) Opposition filed

- ☐ An **opposition proceeding** is initiated where both sides file evidence and argue their case.
- ☐ If the **opposition succeeds** (opponent proves grounds), the **application is refused**.
- ☐ If the **opposition fails** (applicant successfully defends), the mark proceeds to **registration**.

Practical note: Opposition proceedings can be contested and may require legal representation and documentary evidence (use certificates of prior use, affidavits, prior registrations etc.).

6. Application refused (at any stage)

- If the application is refused either at examination (unsatisfactory response to objections) or after opposition, the chart shows refusal as an outcome.
- **Appeal route:** The chart mentions an appeal may be made before **IPAB**.
Important note shown in the chart: Following the notification (Delhi High Court, 2021) IPAB has been abolished and a dedicated IP division has been created to deal with IPR issues — so appeal routes have been updated in law/practice (refer to the current law for exact appellate forum).
- **What you can do:** On refusal you can usually:
 - ☐ File an appeal to the appropriate appellate authority (check current law),
 - ☐ Refile a revised application (if feasible), or
 - ☐ Negotiate settlement with the opponent.

Extra practical tips (to improve success chances)

- **Conduct a clearance search** before filing to avoid marks that are similar to existing ones.
- **Prepare evidence of use** (invoices, ads, packaging) if your mark is descriptive and you want to show distinctiveness.
- **Reply to examination objections promptly and precisely** — a well-drafted response often clears the way to publication.
- **Monitor the Trade Mark Journal** after publication so you can respond to oppositions or defend your application.
- **Keep records of use and renewal** after registration (registration needs renewal every 10 years).

Short flow recap (one-line each)

1. File application → data entry.
2. Examination → examiner raises objections or clears application.
3. If objections → applicant replies → supervisors review → either proceed to publication or refuse.
4. If cleared → published in Trade Mark Journal.
5. After publication → if opposition is filed, opposition proceedings happen → either opposition succeeds (application refused) or fails (mark registered).
6. If refused at any stage → appeal is possible (follow the current appellate route).

Case Name:
**Coca-Cola Company vs. Bisleri International Pvt. Ltd.
(2009)**

- **“Maaza” is a popular mango drink brand** originally created and owned by **Bisleri International Pvt. Ltd.**, an Indian company.
- Bisleri owned the **Trademark “MAAZA”**, its **recipe/formula**, and **goodwill** (brand reputation).
- In **1993**, Bisleri **sold and transferred all rights** related to “Maaza” — including:
 - ✓ the **Trademark**,
 - ✓ the **formulation (recipe)**, and
 - ✓ the **goodwill**to **The Coca-Cola Company**, but only for the Indian market.
- This means Coca-Cola legally owned “Maaza” **in India**.
- However, in **2008**, Bisleri **filed for registration of the same trademark “Maaza” in Turkey** and **started exporting mango drinks** under that same brand name.
- Coca-Cola found out that Bisleri was still using the brand “Maaza” **outside India** (for export).
- Coca-Cola filed a **petition** in the **Delhi High Court** seeking:
 - ✓ A **permanent injunction** (a legal order stopping Bisleri from using “Maaza”), and
 - ✓ **Damages for Trademark infringement** and **passing off**.

Plaintiff (Coca-Cola Company) argued:

- Bisleri had **already sold all rights** to the “Maaza” trademark to Coca-Cola **for the Indian territory**.
- So, **Bisleri cannot use the same mark even for export** from India because the **manufacturing and export activities were taking place in India** — which falls under Coca-Cola’s rights.
- Using “Maaza” again amounts to **infringement** of Coca-Cola’s ownership in India.

Defendant (Bisleri) argued:

- They believed that the sale to Coca-Cola was only for India and that they could still use “Maaza” for exports to other countries (like Turkey).

Court’s Decision:

The **Delhi High Court** agreed with **Coca-Cola** and ruled that:

- Since the **manufacture and export** of “Maaza” were happening **from India**, it was **covered under Indian trademark laws**.
- Therefore, **Bisleri’s actions violated Coca-Cola’s ownership rights** over the “Maaza” mark in India.
- The Court **granted an interim injunction** (temporary order) **against Bisleri**, stopping them from:
 - using the name “Maaza” for any purpose in India, and
 - exporting products under that mark.

Key Legal Principles:

1.Trademark Assignment:

When a company sells or transfers a trademark (as Bisleri did), it loses the right to use it for the agreed territory.

2.Export from India = Use in India:

Even if goods are meant for export, the act of manufacturing and labeling them in India **counts as trademark use in India.**

3.Infringement:

Using a registered trademark without permission, even for export, **is considered infringement** under the Trademarks Act, 1999.

Final Outcome:

- Coca-Cola** won the case.
- Bisleri was restrained (stopped)** from using the trademark “Maaza” for **both Indian and export markets.**