

### Topic 3: New Bangladesh Copyright Law and Scenario – Pertaining to Books and Publication

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#### Protection for Intellectual Property Rights: The Bangladesh Context

All organised human communities have valued the creations of their creative persons such as the authors, artists, sculptors, painters, musician and scientists. It was with Gutenberg's invention of moveable type and the printing press and subsequently of other inventions of modes of reproduction that the need for protection for the creation of the artists and writers became necessary. A legal system for the protection of creators' rights in literary, scientific and artistic fields was slowly developed and enacted. These new enactments formed the basis of the legal system of copyright protection. Subsequently with the invention of phonograms, film radio electronics and computers, the scope of the copyright system was expanded.

This legal system of copyright laws allowed all civilised nations to bestow on their authors and artistic creators certain exclusive rights to control the reproduction and communication to the public, of their exertions. Thus copyright laws acted as a powerful stimulus to creativity and innovations. There are, however, differences among the advocates of copyright as to its concept and scope. But all subscribe to the common purpose of "securing to creators the right to financial reward for the use of their work. That new technologies bring into being new forms of use in no way diminishes this right."<sup>1</sup>

There are other rights which have come to be called neighbouring rights: such as the performing rights, rights to display and adaptation rights to public lending which are in the process of being developed conceptually. In this context a whole body of neighbouring rights has now grown up both at the national and international level which needs legal protection.

#### The Cultural Aspect of Copyright

All nations who want to promote and project their cultural developments must therefore protect the intellectual property of its creative persons by granting legal cover under exclusive copyright enactment. These rights will provide the framework within which authors can compete in an expanding market-place of ideas. "They sustain the instruments of free speech—publishers, motion picture producers, record companies,

board-casting and information industry to the extent that they preserve the intellectual independence of authors and publishers. It has to be ensured that the exclusive rights owned by the creators can be transferred individually to publishers. Without professional publishers working on a sound economic basis and providing adequate returns to the authors, creativity would no longer promote progress."<sup>2</sup>

Simultaneously governments must ensure, for the sake of promoting cultural progress in their own countries that unauthorised reproduction is rooted out or at least be restricted by adequate laws. It must be understood that there can be no cultural progress without creativity and no creativity without proper return to the authors.

All industrialised countries and by now most developing countries have enacted laws against piracy or laws to protect copyright in the "works of the mind". The Universal Declaration of Human Rights says, "Everyone has the right to the protection of the moral and material interests resulting from scientific, literary or artistic production of which he is the author." Laws enacted by individual countries are not effective if the "works of the mind" of one country can be easily reproduced without proper authorisation in another country. Protection to intellectual property can therefore be ensured primarily through multilateral or bilateral agreements. The two international agreements that provide a wide coverage of protection against piracy are the Berne Union or the Berne Copyright Union (1886) and the Universal Copyright Convention (UCC) adopted in 1952 at Geneva. Over the past three decades there have been several amendments to both the multilateral agreements as more and more countries have come into the fold of the two agreements.

The World Intellectual Property Organisation (WIPO) and the United Nations Educational Scientific and Cultural Organisation (UNESCO), both specialised agencies of the United Nations, have been responsible for administering the Berne Union and the Universal Copyright Convention respectively. During the past two decades both WIPO and the UNESCO have made vigorous efforts to encourage and persuade national governments within the UN system to enact laws or adapt

<sup>1</sup> *Rights*, vol.1, No. 1, Spring 1987, Quarterly publication of IPA and STM.

<sup>2</sup> *Ibid.*

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national copyright laws. This has become necessary in order to deal with the new technologies, which impact on protected works within the framework of the two multinational treaties: the Berne and Universal Copyright Convention. Illegal photocopying and reproduction through the computer technology are the menacing copyright laws and intellectual property.

### **What Rights are Protected**

Traditionally the rights that are sought to be protected in both the Berne and UCC relate to: (a) reproducing the work in any material form including recording and filming; (b) publishing the work in any form; (c) performing the work in public; (d) communicating the work through the broadcasting of TV or any other mass media (e) causing the work to be transmitted to subscribers to a diffusion service; (f) making changes such as adaptation, translation or by other arrangement.

The author of literary works is provided legal protection for sixty years under the terms of copyright laws after the death of the author or of its first publication. In case of posthumous publication this term is counted from the date of the first authorised publication.

### **The Paris Amendments**

Two important developments that need mention are the “Stockholm Protocol (1967)” and the “Paris Amendments” of 1971. These were designed to ease the availability of books in developing countries. This gesture by the developed countries to support educational programmes of the developing countries by “Compulsory Licencing,” has had very little impact other than it has moved publishers in the developed world to make cheaper editions available to the poorer countries of the worlds.

### **The Laws to Protect Authors’ Rights**

In order to develop its own national cultural heritage the State needed to protect the interests of authors and creators of literary and artistic works. This contributed to the development of national laws, and then through bilateral and multilateral treaties, the development of international copyright protection.

In view of the fact, however, that intellectual works have a more universal character and can be easily disseminated by ever-increasing technological means, and the news media such as the cinema, radio, television, phonograms, cassettes, videotapes, etc., the recognition of copyright would be incomplete if limited to

national frontiers. This is so since no country has the monopoly of intellectual works. On the contrary each country has, through the creative activity of its nationals, something to offer humanity. Thus it was felt important that a system of international protection should be established to safeguard the interests of authors in foreign countries.

The Berne Convention was concluded as a culmination of the work of three diplomatic conferences held for the purpose between 1884 and 1886; it was actually formulated and adopted on September 9, 1886. Bangladesh is member of both the Universal Copyright Convention (UCC), the Berne Convention and a signatory to the WTO Protocol (IPPR).

### **New Bangladesh Copyright Law and Scenario**

The present copyright law in force in Bangladesh has its roots in the British Copyright Act 1911 which was implemented in British India in the year 1914 to protect creative works.

The creative works in Bangladesh (former East Pakistan) was protected by a Copyright Ordinance (1962), superseding the British Indian Copyright Laws of 1914. The Copyright Ordinance was further amended in 1967 (27<sup>th</sup> February) by the government of the day.

The “laws of continuance” was applied when on independence Bangladesh continued to apply the Copyright Ordinance (Ordinance No.: XXXIV of 1962) as amended upto the 12<sup>th</sup> June 1978. The provisions of this ordinance was adopted as amended copyright act by the Bangladesh Government and prevailed as the copyright laws in Bangladesh.

The Copyright Act (1978) was amended by a National Committee which recommended incorporation of some provisions for cyber laws, and subsequently adopted by the Jatiya Sangsad (National Parliament) and published on 18<sup>th</sup> July 2000 as “Law No.: 28 of the year 2000” and published in a *Bangladesh Gazette* Extra Ordinary on the same day i.e. 18<sup>th</sup> July 2000. The two copyright acts supercede the 1962 Copyright Ordinance. In June 1986 “A Draft Law on Copyright and Neighboring Rights for Bangladesh” was prepared by the International Bureau of WIPO and submitted to the Bangladesh Copyright Board, under the Ministry of Culture. Changes and amendments put forth by the National Committee setup by the government and also proposed some new changes and inclusions to the new act. The proposals were subsequently adopted by the parliament and published on 18<sup>th</sup> May 2005 as “Copyright (amendments) Act 2005.”

The first Copyright Board of Bangladesh was

set up in 1979. The Board generally consists of the Chairman, one representative of the Ministry of Culture, a legal expert, an academic, representative of the film industry, representative of the publishers, a person from the world of art and music. The Registrar of Copyright acts as the member secretary. The Board when hearing appeals acts as civil court and exercises the authority of a civil court. For the purpose of this law the members of the Board are regarded as public servants within the meaning of Section 21 of the Penal Code (Act XLV of 1860). The Board has the powers to make its own rules. A substantial section of the law define what shall not constitute an infringement of copyright. This provision gives a much wider licence for reproduction.

The Courtesy of obtaining permission from the author or publisher is totally absent and in the vernacular press some translators have made it their business to publish serialise Bangla translations of English books which are later put out as books by the translator without obtaining permission from either the author or the publisher.

There is a plea that a large number of copyright infringements in Bangladesh (as in other developing countries) are due to ignorance of the law and lack of knowledge about copyright. This is a plea which encourages the piracy culture. If the plea for ignorance is viewed by courts with leniency it only leads to further ignorance and would institutionalise the piracy culture in Bangladesh.

### **Rights to Property**

Here, we would like to look at the protection provided in the Constitution of Bangladesh to an author or an artist whose rights have been infringed. Because the creation of a creative person is regarded as his “intellectual property,” he should have the same protection under the law. The citizen’s right to property is guaranteed by the Constitution under Article 40 and 42 of the Constitution. Although, property is a general name, it would include every species of valuable right and interest. “The concept of property has been expanded by courts to include practically all rights. Thus patents, licences, trade-marks and copyrights are held to be property distinct from physical or material property.”<sup>3</sup> Also because theft is unlawful and therefore no person can make a business of it, infringement of the copyright of the author is theft and hence punishable. If tested in the courts of Bangladesh it may well transpire that cases of copyright

infringement under the present context may provide better remedy to the plaintiff.

However, there is no alternative to the enactment of appropriate copyright laws to protect the rights of persons who create literature and works of art and science. We need copyright laws to stimulate cultural progress in the country and above all, to root out the existing piracy culture in the knowledge industry of Bangladesh. The proposed “Book Policy” of Bangladesh has made such a recommendation<sup>4</sup> and the sooner we develop such institution, the better for the cultural development of the country.

### **Nature and Scope of Protection<sup>5</sup>**

Copyright subsists in original literary, dramatic, musical and artistic works etc. and relates to the expression of thought, but the expression need not be original or novel. However, to accord copyright, following factors, are taken into consideration —

- The work must not be copied from another work but must originate from the author.
- Two authors independently producing an identical work will be entitled for copyright in their respective works.
- The emphasis is more on the labor, skill judgment and capital expended in producing the work.

Section 14 and 15 of the Copyright Act, 2000 to 2005 lay down the broad scope of copyright protection. A copyright more or less gives the right to do and authorize the doing of any of the following acts, namely —

- i. to reproduce the work in any material form;
- ii. to publish the work;
- iii. to perform the work in public;
- iv. to produce, reproduce, perform or publish any translation of the work;
- v. to make any cinematographic film or a record in respect of work;
- vi. to communicate the work by broadcast or to communicate to the public by loud-speaker or any other similar instrument the broadcast of the work;
- vii. to make any adaptation of work etc.

### **Ownership of Copyright<sup>6</sup>**

<sup>4</sup> The author was a member of the National Committee entrusted with the drafting of the Book Policy of Bangladesh.

<sup>5</sup> Copyright Law in Bangladesh Mohammad Monirul Azam, *The Daily Star*, January 2006.

<sup>6</sup> Ibid.

<sup>3</sup> F.K.M.A.Munim, *Rights of the Citizen under the Constitution and Law*, BILIA, Dhaka, 1975.

The author of the work is the first owner.

- In case the author is employed by newspaper, magazine etc. under a contract of service, the proprietor will be the first owner in the absence of an agreement to the contrary in the case of a literary, dramatic or artistic work.
- Where a photograph is taken, or a painting or portrait drawn for a valuable consideration at the instance of person, such person is the first owner.
- Where any address or speech is delivered in public, the person delivering is the first owner and where it is delivered on behalf of another person such other person is the first owner.
- In case of Government work, Government shall be the first owner.

In case of work made or published by or under any public undertaking, it shall be the first owner.

### Copyright Board<sup>7</sup>

The Copyright Act provides for a quasi-judicial body called the Copyright Board consisting of a Chairman and two or more, but not exceeding six, other members for dealing with copyright issues. The Chairman of the Board is either a present or former district judge or a civil servant having the status of Additional Secretary or a lawyer having the qualification to become a judge of the High Court Division. The Board has the power to —

- i. hear appeals against the orders of the Registrar of Copyright;
- ii. hear applications for rectification of entries in the Register of Copyrights;
- iii. adjudicate upon disputes on assignment of copyright;
- iv. grant compulsory licenses to publish or republish works (in certain circumstances);
- v. grant compulsory license to produce and publish a translation of a literary or dramatic work in any language after a period of one, five or seven years as the case may be, from the first publication of the work;
- vi. hear and decide disputes as to whether a work has been published or about the date of publication or about the term of copyright of a work in another country;
- vii. fix rates of royalties in respect of sound recordings under the cover-version provision; and

- viii. fix the resale share right in original copies of a painting, a sculpture or a drawing and of original manuscripts of a literary or dramatic or musical work.

### Procedure to Obtain Copyright<sup>8</sup>

In order to secure copyright protection what is required is that the author must have bestowed upon the work sufficient judgement, skill and labour or capital. It is immaterial whether the work is wise or foolish, accurate or inaccurate or whether it has or has not any literary merit. In order to qualify for copyrights the works apart from being original, should satisfy the following conditions (except in the case of foreign works):

- i. The work is first published in Bangladesh.
- ii. Where the work is first published outside Bangladesh the author, at the date of publication must be a citizen of Bangladesh. If the publication was made after the authors' death the author must have been at the time of his death a citizen of Bangladesh.
- iii. In case unpublished work the author is at the date of making; the work a citizen of Bangladesh or domiciled in Bangladesh.
- iv. In case of the architectural work of art, the work is located in Bangladesh.

### Registration of Copyright<sup>9</sup>

The steps for Registration —

- i. Application in triplicate with prescribed fees.
- ii. To serve notice of concerned application to every person who has any interest in the subject matter of that application.
- iii. If the Registrar receives any objection he may after holding such inquiry as he deems fit, enter such particulars of work in the register of copyright, which he considers proper.

Registrar then sends copies of the entries made in the register to the parties concerned.

### Summary Discussion on the contents of Copyright Law of 2000 read along with amendments of 2005

The following information will deal with the provisions of the Copyright Laws as it operates today in Bangladesh. Note that I have mostly referred to the provisions of the law which deals with books and publications.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.