
Topic 4-2: Copyright Enforcement in the Music Industry of Bangladesh

Sheikh Sadi Khan, former Chief Music Director, Bangladesh Betar [Radio], and
 Mohammad Nurul Huda, President, Bangladesh Writers Club and Consultant, WIPO.

1. Folk Music and Modern Music are two different sectors

Music in Bangladesh, like most of the countries of the world, is broadly divided into two sectors: traditional folk music and urban modern music. Traditional folk music has also a host of varieties in expression and composition, but they have a common origin, identity and indivisibility depending on a particular community or group of people they belong to. We can cite some of our popular traditional musical expressions like Baul, Bhatiali, Bhawaiya, Mazar, Gambhira, Royani, Hawla, Maizbhandari songs etc, which have extra-ordinary unique identity of their own. Creators, producers and users of all these songs were primarily confined in their respective boundaries and cultural territories in the main, but eventually most of these musical genres have spread beyond their circles and confines. For example, Baul songs virtually originated from Kushtia, its earliest exponent being a poet-composer-singer no less than Fakir Lalon Shah, who lived all his life in this locality. His mortal remains were laid to eternal rest in Cheuria (Kushtia) after the *achin pakhi* (the unknown bird symbolizing human soul) left its *khancha* (a cage symbolizing human body). After his death his Baul songs were religiously exercised and performed by his followers, but now it is being increasingly popular beyond his disciples, spreading out every nook and corner of Bangladesh and beyond. In the wake of such rapid popularity, now it is a highly commercial musical expression and its traditional form is being repeatedly mutilated by a group of self-styled urban Baul singers with a view to making it commercially more viable and profit-generating. In fact, the commercial potentiality of most of our traditional and indigenous songs and music has made it increasingly lucrative for its creators, producers, sellers and users in general. So the question of copyright of these songs comes to forefront, and we are bent upon dealing with this question at the very outset.

2. Folksongs are community creations in the main

As we proceed to identify the right-holders of our traditional folk songs and music inclusive of musical instrument they are accompanied with, we discover some local and individual communities apart from individual authors of its lyric, music or orchestration. We also come to realize that the individual authors and creators are also obliged to their community, since they create and extend their

creations based on perpetuated intangible traditions they have inherited from one generation to another. This is why arguments go for assigning rights to the communities concerned and the duration of such rights also seem to perpetuate in eternity as no community dies out in its essence.

3. Rights for traditional folk music are not limited in time

So rights for folk music are not limited in time like that of an individual author or cultural creator, who gets protection for lifetime and fifty/sixty years after his death, as per provision of Berne Convention and Bangladesh Copyright Act (2000, amended in 2005). We regret that these legal instruments cannot protect the copyright of our community-based folk songs, creating a vacuum in our legal system.

4. Rights for traditional folk music are moral, ethical and utilitarian

Since more than eighty percent of our people live in rural areas and they are clustered into local or indigenous communities on the vast stretch of plains and surrounding hills of Bangladesh, we can not ignore their moral, ethical and utilitarian rights related with their musical expressions.

5. Absence of an adequate legal instrument is the first impediment for Enforcement

Hence the first impediment of enforcing copyright protection of our folk music is an absence of an appropriate section in the existing copyright law of Bangladesh. As far as our findings are concerned, the world bodies like WIPO or UNESCO dealing with IP issues are aware of such situation prevailing throughout the world and they are putting utmost endeavors to formulate and enact appropriate law at national and international level for the protection of traditional cultural expressions of all kinds. A recent study conducted by WIPO (Mohammad Nurul Huda, 2006) reveals that more than two billion dollar is in circulation in the traditional cultural expressions with commercial potentiality every year in Bangladesh. The majority of this involvement lies with traditional music. And the traditional rights, moral rights and commercial rights of the communities and individual concerned are being violated owing to the absence of an appropriate law.

6. A draft law suggested for protection of TCEs (Traditional Cultural Expressions)

The study has suggested a draft law following a

WIPO model, which if implemented internationally and nationally, is expected to take care of IP rights for TCEs of the concerned communities and individuals obliged to them. It will work as an instrument for alleviating poverty, creation of wealth at grass-root level, ensuring moral and ethical rights and acquisition and equitable benefit sharing of commercial gains coming from planned utilization of all items.

7. Enforcement shall also work for revival of endangered and extinct musical expressions

The other most significant outcome of enforcement of rights will be reflected in the form of protection, revival and promotion of endangered and extinct items like Hudmar Gan (Songs praying rains to a deity called Hudum) etc, since it will help diversify our cultural scenario. The inherent bottleneck of enforcement of rights for our traditional music lies in the very inadequacy of awareness among our local and indigenous right-holders in general. The wiser section of national and international communities should come forward to make them conscious about their rights and struggle to wrestle the same.

8. Modern Urban Musical Expressions

Modern urban musical expressions offer a composite idea of songs and expressions created by individual authors and creators across the world. The form of these expressions is somewhat hybrid and diversified, since it is based on innovative skills of individual creators, who may make prudent use of a host of national and international traditions overlapping one another since antiquity.

9. Creator of Modern Music is mostly an individual, protected by existing law

A creator of modern music blending lyric, tune and composition is chiefly guided by his compelling urge stemming from his embedded stimulation of creativity. So he is explicitly identified with the rights of his creations. It is interesting to note that his creations are legally protected by law, if he registers his products with the copyright office as per relevant section of Copyright Act (2000, amended 2005). This law clearly empowers him to enjoy his rights for lifetime plus sixty years after his death to be enjoyed by his legal successors.

10. Musical Works is not clearly defined in Copyright Act 2000 (amended 2005)

Section 3(a) of the Copyright Act 2000 mentions 'musical works' as one of the items to be protected along with 'dramatic works, dramatic music, film or musical works'. We feel that the emphasis laid here is not fully unambiguous. Musical works have not been mentioned here as an independent entity, rather as a part of drama or a

substitute of film etc. This is sheer injustice to a genre, which is identified as one of the earliest cultural expressions of mankind since remotest antiquity. The situation is slightly improved in Copyright Rules 2006, formulated and enacted under Copyright Act (2000, amended in 2005), since in its section 3(a) 'musical works' are identified as a separate genre, not a substitute or associate of drama and film works. So the very first hindrance towards the enforcement of copyright law of musical works in Bangladesh is in-built in the drafting of the law concerned, which should be removed and updated without further delay. We understand that right-holders in this field should also come forward immediately, and they should come from individual, community, institutions and various appropriate agencies concerned.

11. No concerted campaign or program for awareness and training by government agencies

Apart from absence of law for traditional folk music and inherent weakness in the existing law for modern urban music owned by living individuals, no concerted or enduring campaign, or educational programs or action plan are taken by Copyright Office, Patent Design and Trade Mark Office or any other appropriate government agency to popularize the idea of copyright and intellectual property right among our authors, cultural creators, stakeholders and others concerned.

13. Follow-up of present initiative is necessary

We thank ACCU, Japan for taking foremost initiative in organizing this seminar, but we consider it inadequate if they stop here after this step taken in isolation without subsequent linkages and follow-ups. Similar steps taken in the past has left no lasting results. In this connection we lay greater emphasis on the importance of the role to be played by Bangladesh Copyright Office and Ministry of Cultural Affairs in the main. The present Copyright Office is devoid of adequate infrastructural facilities and funding to work as a competent coordinating authority.

14. Copyright Office should develop reading materials

The copyright office should develop reading materials for all concerned and distribute it among stakeholders and right-owners free of cost. We would suggest that the Bengali version of 'Asian Copyright Hand Book' should be printed by Copyright Office, Bangladesh after necessary editing and it should be made available to all interested quarters including members of judiciary and law enforcing agencies.

15. Not only judiciary and law enforcing authority, but also BIPO is needed

CHAPTER II

It is popularly believed that enforcement of copyright mainly depends on judiciary and law enforcing authorities, but the initial role of making them aware rests on fundamental institutions like Copyright and Patent-Designs Offices, which lack coordination of work in many sectors. In fact, establishment of a unified IP Office like BIPO (Bangladesh Intellectual Property Office) may consolidate all coordinated efforts in this regard.

16. The role of musical creators

The role of musical creators including lyric writers, tune-setters, singers and performers is no less important in asserting and reaching their target. Though the unprivileged individuals and groups among musical creators are not aware of their rights, the educated class seems to be cautious about their rights and interests. But they have taken no collective efforts so far to realize their legitimate rights.

17. Copyright Society in Musical Sector is needed

Both the Copyright Act (2000) and Rule (2006) clearly includes provisions for forming Copyright Societies relating to all genres individually. These may also be called collective management societies. No such society has come into force as of now in Bangladesh. This results in a vacuum of a competent bargaining agency for copyright of musical works. But for such organizations, enforcement of copyright seems to be a far cry in a country like Bangladesh.

18. Piracy, the much talked issue

The issue that we are going to dwell on before we come to the end of this brief observation is the much discussed issue of piracy in the field of music of all sorts in Bangladesh. If piracy means violation of creator's rights, it is an oft-recurrent phenomenon here. In fact, all aspects of copyright of our traditional folk songs and music are being violated in absence of an appropriate law. On the other hand, musical rights of our home producers and international producers are also being infringed indiscriminately despite the prevalence of an acknowledged law.

19. Absence of an IP-watch Agency

In absence of a competent IP-Watch agency, commercial producers and sellers are running without check-and-balance and they are making random copies of cassettes, CDs of popular music and songs from home and abroad. A visit to any big or small or street shop selling such items in Dhaka would expose ready proof of illegal copying.

20. User Agreement is not honored

The seller is not aware of a legal user agreement

with the singer, performer, tune setter or lyric writer. Similarly, law enforcing authority seems to be equally unaware, if not indifferent, about such violation of intellectual and creative rights. At times, popular and celebrated artists enter into user agreement, but this agreement is violated over and over again by sellers at different corners of the country. Young artists are often seen to pay sizeable amount to the producers for publishing their cassettes/CDs and they are also deprived of their legitimate investment – not speak of the royalty they are entitled for.

21. Piracy of all kinds is overlooked by all quarters

Most of the shops are loaded with pirated versions of Hindi songs and popular western music, which are being overlooked by copyright offices, law-enforcing authorities and at times, by right-holders themselves. So we get hardly any time to decide if copyright is violated in case of a music used as a ring-tone in mobile phones or in a radio-television jingle for commercial publicity.

22. Pirates camouflage by raising slogan against piracy

It is an irony to see that the pirates often seem to raise slogans against piracy and thus they conceal their own offenses deliberately. It also seems that we are confined in an all-engulfing vicious circle of piracy due to sheer lack of enforcement of existing IP laws in Bangladesh.

23. Respect, Recognition and Benefit Sharing

Before we conclude, we would stress upon respect, recognition and benefit-sharing of copyright of all kinds of musical products at home and abroad, which will help us grow as dignified nation. We must remember the fact that copyright means the creator's right to copy his tangible and intangible creations, which he may allow others to copy on the basis of PIC (prior informed consent) and user agreement for the mutual benefit of both of them. Enforcement encourages legal benefits for the individuals and the collective entity fostering wealth creation and diversification of creativity for all of us.