

Legal Mechanisms for Copyright Protection & Its Efficacy in Economical uplift of Bangladesh

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Abstract:-The main objective of copyright law is to enable the author to protect his work. Copyright comes into effect automatically when the author permanently fixes an original work like literature, music, choreography, pictures, movies, software, architectural works etc. Any unauthorized copy, reproduction or use of copyright causes its infringement. However, this paper attempts to draw the present legal structure of Copyright Protection System (CPS) through addressing the definition of copyright, infringement of copyright and protection against copyright infringement for continuity of economical uplift in Bangladesh. The main part of this paper has focused on the importance of proper enforcement of present legal mechanism for protection of copyright and its role in economic development of Bangladesh.

Keywords: *Copyright, Copyright Protection System (CPS), intellectual property protection (IPR), infringement, ownership, fair dealing, remedies.*

I. INTRODUCTION

The present socio-economic culture of world is growing faster because of globalization through rapid technological advancement. So, it has become imperative to protect the creativity to cope with the situation using the tools of Intellectual Property Rights (IPR) system. Copyright is a very important part of this IPR system. If the copyright of a work is not protected, the author or creator does not feel encouraged to create or design a work that obstruct the creativity. So, it has become an indispensable element for commercialization of new creation worldwide.² An effective copyright protection system has become a crying need in our country for its economical advancement. It has become the demand of the time for Bangladesh to strengthen its copyright property protection system to enrich our national economy.³ As with all fields of intellectual property, copyright is concerned with protecting work of the human intellect. Copyright ensures the protection of literary and artistic works. These include writings, music, films, broadcasting, works of the fine arts, such as paintings and sculptures and technology based works such as computer programs and electronic databases. So, the copyright law is enacted by most governments for giving the creator of an original work an exclusive right to it for a specific period.

II. DEFINITION OF COPYRIGHT

Copyright can be defined as a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings etc. So Copyright includes every expression of literary, scientific and artistic works.⁴ So, it can be upon, books, painting, computer programs, sketch etc. Copyright refers an exclusive rights vested in the owner of copyright which can be exercised only by the owner of copyright or by any other person who is duly licensed in this regard by the owner of copyright. These rights include the right of adaptation, right of reproduction, right of publication, right to make translations, communication to public etc.⁵

However, U.S. Copyright Office defines copyright as:

"..... the right to copy but has come to mean that body of exclusive rights granted by law to copyright owners for protection of their work."⁶

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² Hawlader, Abdul Awal, *Enforcement of Copyright Law in Bangladesh*, p-49

³ Ibid

⁴ Article-2, Bern Convention 1887.

⁵ Hossain, MD Milon, *Intellectual Properties: Bangladesh Approach*, *International Journal of Humanities and Social Science (IJHSS)*, Vol-1, Issue-2, p-13.

⁶ See more at: <http://www.copyright.gov/help/faq/definitions.html> (last visited on 10/09/2014)

The copyright law exists to prevent others from taking unfair advantage of a person's creative efforts. A common example of copyright is where the owner in a work of literature permits a publishing company to print and sell copies of the work in book form in return for royalty payments, usually an agreed amount of the price the publisher obtains for the books.⁷ So, the term copyright means a bundle of rights which visual artists, writers, musicians and film makers own in relation to their work. It exists in every kind of creative work and is one of the most powerful rights which you can own as a creator.

III. COPYRIGHT LAW IN BANGLADESH

In Bangladesh, the first legislation on copyright was introduced in 1914. It was mainly based on the British Copyright law of 1911. After the separation of 1947, a new copyright law as being the Copyright Act, 1962 was promulgated and thereafter the Copyright Rules, 1967 was framed in the then Pakistan. After a historic bloody war of 1971, the then East Pakistan Province of Pakistan State obtained full independence and emerged Bangladesh. After 1971, Bangladesh, as a sovereign state, has done a lot of changes in its legal system considering the prevailing situation in Bangladesh and around the world. Thus, the Copyright Act, 1962 has been replaced in 2000 by the Bangladesh Copyright Act 2000 (Act 28 of 2000).

International Instruments for Protection of Copyrights and Membership of Bangladesh

The major international instruments for protection of copyrights in where Bangladesh has obtained memberships are in the following:

- The General Agreement on Tariffs and Trade (GATT), 1994.
- WIPO Convention establishing the World Intellectual Property Organization (WIPO) on July 14, 1967.
- Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) 1886-96.
- Universal Copyright Convention, 1952.

IV. OWNERSHIP OF COPYRIGHT

In the case of written, theatrical, musical or artistic works, the author or creator of the work is the first owner of any copyright in it. The exception to this happens where the work is made by an employee in the course of his or her employment. In some situations two or more people may be joint authors and joint owners of copyright. However, in Bangladesh, the owner of copyright is generally, at least in the first instance, the person who created the work (the author of the work). There can be exceptions to this principle under the Copyright Act, 2000.⁸ For example: if 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. Again, in case of a photograph taken or a painting or portrait drawn or an engraving or a cinematograph film made for valuable consideration at the instance of a person, such person is the first owner. In case of any address or speech delivered in public, the person delivering such address or speech is the first owner of it but another will be the first owner if it is made on behalf of him. However, the initial rights of owner in a work may transfer all his economic rights to a third party. But moral rights, being personal to the author, can never be transferred.

Duration of Copyright in Bangladesh at a glance:

The law provides for a specific period of time during which the rights of the copyright owner exist. In those countries which are party to the Berne Convention, the duration of copyright provided for by national law is the life of the author and not less than fifty years after the death of the author.⁹

In Bangladesh, copyright duration are as follows¹⁰:

⁷ Bainbridge, David I., *Intellectual Property*, Pearson Education Limited, England, 2010, Eight Edition, at p-31

⁸ Section-17.

⁹ Supra Note.

¹⁰ Section 30-31, *Ibid*.

- a. in cases of literary, artistic, musical, dramatic works, the terms is 60 years from the beginning of the calendar years next following the year in which the author dies (Life + 60 years);
 - b. in cases of photograph, the term is 60 years from the beginning of calendar year next following the year in which the photograph is published (60 years from publication);
 - c. in case of cinematographic film, the term is 60 years following the year in which the film is published (60 years from publication);
 - d. in cases of Govt. works, it is 60 years from publication (60 years from publication);
 - e. in cases of local authority, the term is 60 years from first publication (60 years from first publication);
 - f. in case of sound recordings, it is 60 years from publication (60 years from publications);
 - g. in case of works of international organizations, the term is 60 years from 1st publication (60 years from first publication);
 - h. in case of broadcasting, the term is 25 years from the beginning of the calendar year next following the year in which the broadcasting is made (25 years from broadcasting);
 - i. in case of performance, it is 50 years from the beginning of the year next following the year in which the performance is made (50 years from the first performance is made);
 - j. in case of published edition (typographical arrangement), the term is 25 years from the beginning of the calendar year next following the year in which the edition is first published (25 years from the first publication);
 - k. in case of joint authorship of a work, the term will be 60 years from the death of last surviving author (60 years from death of the last surviving author);
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V. CONDITIONS FOR GETTING COPYRIGHT PROTECTION IN BANGLADESH

The copyright comes into existence as soon as a work is created. No formality is required to be done for getting copyright. However, one can avail some facilities for having the work registered in the Register of Copyrights at Copyright Office under the Ministry of Culture Affairs. A certificate is issued by the Registrar of Copyright that makes a *prima-facie* evidence of ownership of copyright.

In order to get copyright protection under the Copyright Act, 2000 the author has to show that the work is original one. It is unnecessary to justify whether the work is wise or foolish, accurate or inaccurate or whether it has or has not any literary merit. However, there are some conditions must be satisfied for getting copyright registration. These are:

- i. For any published work, it has to be published first in Bangladesh. If it is first published in foreign country, the author must be a citizen of Bangladesh or domicile in Bangladesh at the date of publication.
- ii. Where the author is dead at the time of publication and his work is published after death, the author must be a citizen of Bangladesh or domicile in Bangladesh at the time of his death.¹¹
- iii. If any work is published in Bangladesh as well as other country simultaneously, it should be considered to be first published in Bangladesh. The work shall be considered to be simultaneously published if the difference of days between the publication in Bangladesh and publication in any other country is more than 30 days or the time prescribed by the Government.¹²
- iv. For any unpublished work, the author is on the date of making of the work a citizen of Bangladesh or domicile in Bangladesh. This rule is not applicable for architectural works.¹³
- v. In the case of any cinematographic work, the office or residence of the producer must be in Bangladesh at the time of making the work.

¹¹ Section 15 (2) (a), The Copyright Act, 2000.

¹² Section 5, *ibid*

¹³ Section 15 (2) (b), *ibid*

VI. INFRINGEMENT OF COPYRIGHT

Generally speaking, copyright infringement means a violation of the rights secured by a copyright. According to U.S. Copyright Office, 'copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner.'¹⁴ However, unauthorized copy, reproduction or use of copyright raises the question of infringement. The Copyright Act, 2000 also ensures protection by inserting the provisions of infringement. Copyright in a work is deemed to be infringed:¹⁵

When any person, without a license from the owner of the copyright, or the Registrar of the copyright, or in contravention of the conditions of a license granted or any conditions imposed by a competent authority under Act:

- i. does anything, the exclusive right to do which is conferred upon the owner of the copyright; or*
- ii. permits for profit any place to be used for communicating the work to the public where such communication constitute an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright.*

Thus copyright infringement includes any violation of the exclusive rights of the copyright owner. It can be unintentional or intentional. The unintentional infringement is known as *innocent infringement*. An example of innocent infringement was observed in *Bright Tunes Music Corp. v. Harrisongs Music*¹⁶ case. In this case, former Beatle George Harrison created his song "My Sweet Lord." He was found to have unconsciously copied the tune of another song, "He's So Fine," by the Chiffons, and thus was liable for innocent infringement of copyright. On the other hand, intentional infringement denotes vicarious or related infringement that indicates those who make profits indirectly from the infringement of copyright. For example- a theater owner commits intentional infringement by making profits from booking a band that illegally performs copyrighted works.

VII. EXCEPTIONS TO INFRINGEMENT

There are some exceptions to copyright infringement where authorization from the copyright owner is unnecessary. These are:

- i. If you are using any work which is not protected under copyright law.
- ii. If the work is in the public domain. For example, certain texts by Aristotle, Shakespeare etc. may be reproduced without seeking permissions.
- iii. If your use is covered by the concept of 'fair use' or 'fair dealing' or by a limitation or exception specifically included in the national copyright law.

However, in Bangladesh, the Copyright Act, 2000 provides certain exceptions to infringement. These general exceptions are given in below:¹⁷

¹⁴ See more at <http://www.copyright.gov/help/faq/faq-definitions.html> (last visited on 10/09/2014)

¹⁵ Section 71, The Copy Right Act, 2000 (Act 28 of 2000)

¹⁶ 420 F. Supp. 177 [S.D.N.Y. 1976]

¹⁷ Section-72, The Copyright Act, 2000.

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| 1 | Fair dealing without commercial benefits. |
| 2 | Reproduction for use in academic discussion, review or criticism. |
| 3 | Reproduction for use in judicial proceedings and for use of members of the legislature. |
| 4 | Publication of short passages, restricted reproduction or performance for educational purposes. |
| 5 | Making of records under license from Copyright Board on payment of royalty. |
| 6 | Playing of records or performance by a club or society for the benefit of the members of religious institutions. |
| 7 | Reproduction of an article on current economic, political, social or religious matters in newspapers, magazines etc. |
| 8 | Reproduction of a few copies for use in libraries or for research or private study. |
| 9 | Matters published in official gazettes including Act of Parliament (subject to certain conditions) or its translation. |
| 10 | Making of a drawing, engraving or photograph of an architectural work of art, or a sculpture kept in a public place. |
| 11 | Use of artistic work in a cinematography film. |
| 12 | Use of an artistic work (author not the owner of copyright) by the author of any mould, cast, sketch, plan, model, etc., made by him for the work. |
| 13 | Making of an object in three dimension of an artistic work in two dimensions subject to certain condition. |
| 14 | Reconstruction of a building in accordance with architectural drawings etc. |

VIII. REMEDIES AVAILABLE AGAINST COPYRIGHT INFRINGEMENT

In Bangladesh, there are three kinds of remedies available against copyright infringement under the Copyright Act, 2000. These are:¹⁸

1. Civil remedies

Civil remedies include compensation for infringement of copyright. The owner of the copyright can bring civil litigation against the infringer. This civil proceeding is to be filed in the Court of District Judge, within whose jurisdiction the plaintiff resides or carries on business or where the cause of action arose irrespective of the place of residence or place of business of the defendant.

2. Criminal remedies

Criminal remedies provide for the imprisonment of the accused or imposition of fine or both, seizure of infringing copies etc. Criminal proceedings are available in order to punish the persons who have violated the copyright law. The infringement of copyright is a cognizable offence and is punishable with imprisonment for a prescribed period by the Act. The Act also provides provisions for seizure of infringing copies and confiscation of all duplicating equipments used for manufacturing counterfeit copies.

3. Administrative remedies

Administrative remedies empower the Registrar of copyrights to ban the import of infringing copies into Bangladesh.

Provision of Appeal

Under the Copyright 2000 Act, any order made by the Registrar of Copyright is subject to appeal to the Copyright Board.¹⁹ Against any order made by the Board, the aggrieved person may prefer appeal to the High Court Division of the Supreme Court of Bangladesh.²⁰

IX. EFFICACY OF COPYRIGHT PROTECTION IN ECONOMICAL UPLIFT

There is a reciprocal relationship between culture and economy. The cultural and economical progress of a country largely depends upon its Copyright Protection System (CPS). The development of literary and artistic works of a country depends upon the protection of copyright and a better protection of copyright plays a very important role in the smooth economical uplift of that country. A better Copyright Protection System (CPS) can ensure the economical progress through statutory protection in utilizing them and excluding others from unauthorized using them. If copyright is not properly protected within a country, the literary and artistic works

¹⁸ Section 82 of Copyright Act, 2000 (Act 28 of 2000).

¹⁹ Section 95 of the Copyright Act 2000 (Act 28 of 2000).

²⁰ Section 96 of the Copyright Act 2000 (Act 28 of 2000).

of that country will be abolished gradually. So, protection of copyright is an essential instrument to protect the culture of a country and definitely the cultural development contributes in economical uplift. Bangladesh is rapidly taking steps towards establishing itself as a developed country. Our socio-economic indicators prove that Bangladesh is a strong emerging economy and a culturally enriched nation. In order to turn it into a developed one, copyright protection must be ensured by maintaining international standard.

This emergence of Bangladesh has been gradually recognized worldwide and it has been reported by different international media that Bangladesh may surpass western countries by 2050. These progresses have been fastened by the increased availability of creativity and artistic works. The creativity and artistic works have become the major sources of economic and cultural growth in Bangladesh.²¹

However, **Mr. James F. Moriarty**²² also emphasizes on copyright protection of Bangladesh for its economical uplift.

According to him,

Intellectual property rights (IPR) are the legal mechanisms like copyrights, patents and trademarks that ensure that the products we buy are genuine..... copyright protection fosters an environment in which creativity can thrive and contribute to economic development worldwide.

He also expressed that-

Bangladesh's film-makers such as Tareque Masud and Catherine have won critical international acclaim for their films but frequently suffer the theft of their work in their home country. The illegal sale of stolen music and films in nearly all of Bangladesh's markets is a troubling indicator of the scale of the Intellectual Property Protection challenge. Developing countries too often assume that Intellectual Property Protection only benefits first world nations. This perspective unfairly discounts indigenous capacity for innovation – as if good ideas worth protecting and promoting can only come from the first world..... An economy built on weak IPR foundations is one in which the abuse of foreign and domestic IPR occurs hand-in-hand. Bangladesh's artists have proven themselves worthy of the highest awards and recognition world wide – it's time that Bangladesh's domestic IPR mechanisms now grant them the same honor.”²³

X. FINDINGS AND REMARKS

The necessity of copyright protection was felt only after the invention of printing press. However, the fundamental aim of copyright law is to protect the rights of authors, composers, artists and designers to copy their works for monetary gain and encourages them thereby. It protects the authors from the unauthorized reproduction of their materials. The authors are encouraged in creating more and more works if they get proper protection of their works. Thus, a proper copyright protection system of a country can promote the creativity of her people and the economic as well as social development of a country is dependent on creativity.

In Bangladesh, our existing legal mechanism are sound enough to protect copyright to promote creativity through providing proper protection to authors but some visible problems disturbs its enforcement. For example: lack of public awareness about the law, inadequate administrative supports, lack of modern technological tools, slow process of copyright registration, back dated search facilities and tools, lack of digital data and networks etc. So, it has become the demand of the time to sort out these problems for ensuring a proper copyright protection system by proper implementation of existing laws. The Government has to be more serious about the proper implementation of copyright laws and taking necessary measures to facilitate its enforcement. Besides, the public awareness on copyright protection should be brought by conducting different seminar, symposium and workshop. Different academic institutions should introduce some fundamental knowledge to its students regarding copyright protection system and its efficacy in economic advancement of a country for raising awareness. If it becomes possible to enforce the mechanism, the economy of our country will definitely march forward.

²¹ Rahman, Md Azizur, Intellectual Property Rights in Bangladesh, *Dhaka Tribune*, April 28,2013, available at: <http://www.dhakatribune.com/op-ed/2013/apr/28/intellectual-property-rights-bangladesh#sthash.P98Aty13.dpuf> (accessed on 10/10/2014)

²² The Former U.S. Ambassador to Bangladesh

²³ *Protecting Intellectual Property Rights: Challenges and Opportunities*, By James F. Moriarty, Former U.S. Ambassador to Bangladesh, Embassy of United States of America.