

# SUPREMEiP

In Bangladesh, in order to get copyright protection, the owner of the work should register it under the Copyright Register in accordance with the law. It is relevant that registration is optional under the 2000 Act; it is not compulsory to get copyright protection under the Copyright Act. At the same time, it is also true that copyright protection is legally ensured to the copyright owner by registration; a certificate of registration of literary, dramatic, or artistic work is considered prima facie evidence when any dispute arises. Any person other than a registered owner can get copyright protection by a grant of license, either by voluntary or compulsory permit or any other means, such as assignment. Here, the provisions of infringement and remedies of copyright infringement also play an imperative role in providing copyright protection to the copyright owners.

## **What are the conditions for Getting Copyright Protection in Bangladesh?**

Copyright comes into existence as soon as a work is created, and no convention is required to be completed to acquire such a monopoly right under the Act of 2000. However, facilities exist to have the work registered in the Register of Copyrights maintained in the Copyright Office under the Ministry of Culture Affairs. The certificate issued by the Registrar of Copyright under observation of prima-facie evidence of copyright ownership. The Copyright Office has been set up to provide registration facilities for all types of works and is headed by a Registrar of Copyright. In Copyrightget copyright, the owner has to show that the work is original; it is immaterial whether the work is wise or foolish, accurate or inaccurate, or whether it has or has not any literary merit. To qualify for copyrights, the works, apart from being original, should:

- In the case of published work, it has to be published first in Bangladesh. Still, if it is first published<sup>30</sup> in a foreign country, the author must be a citizen of Bangladesh or domiciled in Bangladesh at the date of publication or where the author is dead at the time of publication. The work is published after his death; the author must be a citizen of Bangladesh or domicile in Bangladesh at the time of his death. It is important to note that if any work is published in Bangladesh and any other country simultaneously, it should be considered first published in Bangladesh. The work shall be deemed to be simultaneously published if the difference of days between the publication in Bangladesh and publication in any:
- In the case of unpublished work, the author is a citizen of Bangladesh or domiciled in Bangladesh on the date of making the work. This does not apply to works of architecture.
- In the case of cinematographic work, the office or residence of the produce must be in Bangladesh at the time of making the work, and the office or residence of the producer must be in Bangladesh at the time of making the whole or substantial part of the work.
- In the case of any architectural or artistic work, it must be located in Bangladesh.

## **What is Copyright Infringement?**

Simply, commercial exploitation of any work without the proper authorization of its author or creator shall constitute a crime of infringement, such as unauthorized copying or reproduction of copyright, which raises the question of infringement. In order to ensure exclusive rights to the owner of a work, there must be specific provisions as regards infringement. Which acts create infringement if it is well defined by law; it will be easy on the part of the owner to take necessary actions against the offender, and thus, the rights and interests of the owner shall be protected. Copyright also ensures protection by inserting the provisions for infringement. Copyright in a work is deemed to be infringed:

When any person, without a license from the proper authority, e.g., Copyright the copyright or the RegiCopyrightthe copyright or in contravention of the conditions of a permit granted or any conditions imposed by a competent authority under Act:

- Does anything, the exclusive right to do which is conferred upon the Copyright copyright, or
- permits for profit any place to be used for communicating the work to the public where such communication constitutes an infringingCopyrightthe copyright in work unless he was not aware and had no reasonable
- ground for believing that such communication to the public would be an infCopyright of copyright.
- Copyright infringement may also arise if any person does any of the following acts:
- makes for sale or hire, or sells or lets hire or by way of trade displays or offers for sale or hire any infringing copies of the work; or
- distributes, either for trade or to such an extent as to affect prejudicially the Copyright copyright, any infringing copies of the work, or
- exhibits to the public by way of trade any infringing copies of the work, or
- imports in Bangladesh any infringing copies of the work.

The present copyright law simultaneously provides certain cases where no infringement can arise.<sup>84</sup> Several exceptions are as follows:

- Fair use of a literary, dramatic, musical, or artistic work for the purpose of private study or private use, including research, criticism, or review.
- Fair use of a literary, dramatic, musical, or artistic work to report current events in a newspaper, magazine, or similar periodical or in a cinematograph film or through a photograph.
- Reproduction for use in judicial proceedings and for use of members of the legislature, etc.

## What is the Copyright Piracy?

I was very young when my school friends took me to Bangla Bazaar (in the commercial capital of Bd) to get new MP3s and DVDs. I wondered then how those MP3s had all the songs by Guns & Roses and Eric Clapton in just Tk. 30 - 40. Also, the latest Hollywood movies were available for the same price. I told my friends, referring to the people selling those MP3s and DVDs, that these are unbelievable and that miracles matter. No, one of my friends replied and added that It was all illegal. Today, it is called as piracy.

Piracy is considered to be the illegitimate use of material Copyright by copyright. The unauthorized copying or reproduction of copyright ingredients for commercial objects and the unauthorized commercial dealing in copied ingredients is treated as copyright violation or piracy. It affects all

elements in creating, producing, and distributing intellectual works to constitute a copyright system. Piracy primarily targets software, film, and musical works. However, the unauthorized copying of books and other text works remains common, especially for educational repurposes. The pirated copies are usually sold at reduced prices, undermining the original authors' and investors' possibility of obtaining a just moral and economic reward for their work and investment. Thus, the authors and investors lose interest in creating new literary, dramatic, or artistic work.

Copyright piracy is a great problem in Bangladesh. Here, its rate is the highest in the world. Most people do not realize that the copyright of a work (literary, artistic, or dramatic) belongs to the creators or authors, not to them. If they copy it without authorization, it constitutes an infringement or an offense under specified laws of the state.

## **What are the Remedies of Copyright Infringement?**

The enforcement obligations in the TRIPS Agreement provide a comprehensive foundation for developing civil, administrative, and criminal procedures and remedies necessary for effective enforcement against traditional forms of copyright piracy. Articles 41-61 of the TRIPS Agreement provide enforcement provisions regarding copyright. Some of them are as follows:

- (i) effective action against infringements, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further violations.
- (ii) adequate civil or administrative procedures and remedies, including the availability of civil injunctions, the disposal or destruction of pirate goods, and the disposal or destruction of materials and implements whose predominant use has been in creating the infringing goods.
- (iii) adequate criminal procedures, including deterrent penalties;<sup>96</sup> the availability of seizure, forfeiture, and destruction of infringing goods; and seizure, forfeiture, and destruction of materials and implements, the predominant use of which has been in the commission of the offense.

The Copyright Act of Bangladesh fulfilled the provisions of the TRIPS Agreement, by this agreement there are three kinds of remedies against the infringement copyright of copyright have been specified, namely:

### **Civil remedies**

The Copyright copyright can bring a civil action in which relieves such as Anton Pillar Order or (Search Order) injunction, accounts, and damages can be sought. A suit or other civil proceedings relating to infCopyright of copyright 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 Civil suits provides a remedy for claiming compensation for infCopyright of copyright and loss of profits as well. Anton Pillar Order is significant to prove the infringement. Thus, the copyright office, in collaboration with customs authorities, can inspect any vehicle, ship, aircraft, dock, or premises based on a complaint lodged by the owner of a copyright or his duly authorized agent and can take action to prevent the importation of illegal copies of the copyright materials.

### **Criminal remedies**

The owner may initiate criminal proceedings against the alleged infringer under the provisions of this Act of 2000. The Act has incorporated certain acts as offenses:

- i. willful infringing or abetting the copyright in work other than in the case of a cinematograph film; or
- ii. willful infringing or abetting the infringing the copyright in a cinematograph film; or
- iii. in the copyright in a work of computer program, publishing it in any medium, selling or distributing it more than one copy; or
- iv. using an infringed copy on a computer.

The present Act provides criminal remedies under the above circumstances for the imprisonment of the accused or imposition of fine or both, seizure of infringing copies, etc., in the following ways:

Firstly: The infringement of copyright is a cognizable offence and is punishable with imprisonment for a period extending from six months to four years and a fine ranging from Tk. 50,000/- to Tk. 200,000/-.

Secondly, The Act provides for the seizure of infringing copies and confiscation of all duplicating equipment used for manufacturing counterfeit copies. However, if the court is satisfied that infringement is committed without an intention for profit or non-commercial purpose, the court may give a lesser punishment, which may be imprisonment for less than six months and a fine of less than 50,000 taka.

Thirdly, in the case of computer program piracy, the fine was extended by an amendment to the Copyright Act on May 18, 2005, which is now a minimum of Tk. 100,000 and a maximum of Tk. 400,000 if it is committed for commercial purposes. However, in case of mere use of an infringing copy or if the court is pleased that it is committed for non-commercial purposes, the court may impose lesser punishment and reduce the fine as well.

## **Administrative remedies**

Any person aggrieved under the Copyright Act may apply to the Registrar to ban the import of infringing copy into Bangladesh, which is another important remedy for the owner of the work as an administrative remedy when the infringement is by way of such importation and the delivery of the impounded infringing copies to the Copyright copyright. Counterfeit/pirated goods, can, if it is proved by the court as an act of infringement, be destroyed by the administrative authority.

## **Copyright Board**

The Copyright Board is a juristic body constituted under the Copyright Act of 2000 to discharge the judicial functions under this Act. The Board shall consist of a chairman and two or more members but not exceeding six members. They shall be appointed for a term not exceeding five years. The Chairman of the Copyright Board shall be a person who is or has been a Judge of the High Court Division or is qualified for appointment as a Judge of the High Court Division of Bangladesh. The Registrar of Copyrights shall be the Secretary of the Copyright Board and perform such functions as may be deemed a Civil Court.

The Copyright Board shall perform the following functions mainly:

1. To decide whether a work has been published or the date on which the work was published to determine copyright or copyright.

2. To decide whether Copyright of copyright for any work is shorter in any other country than under the Act.
3. To settle disputes arising concerning the assignment of copyright under this act.
4. To settle disputes regarding share rights in the resale of original copies.
5. To grant compulsory licenses to Bangladeshi works withheld from the public.
6. To grant compulsory licenses to publish an unpublished work.
7. To grant compulsory licenses to produce and publish translations of literary and dramatic works.
8. To grant compulsory licenses to reproduce and publish specific literary, scientific, or artistic categories for certain purposes.
9. To certify the Register of Copyrights by;

The making of any entry wrongly omitted to be made in the register, or  
 The expunging of any entry wrongly made in, or remaining on, the register or  
 The correction of any error or defect in the register.

## **Appeal**

An Appeal from any order of the Board shall lie to the High Court Division, and such an appeal must be filed within three months from the decision date. But the decision the Board gave under section 6 of the Act shall be final and no appeal shall lie from that decision. The Act also laid down that the Registrar of Copyrights and the Copyright Board shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

- summoning and enforcing the attendance of any person and examining him on oath,
- requiring the discovery and production of any document,
- receiving evidence on affidavits,
- issuing commissions for the examination of witnesses or documents,
- requisitioning any public record or copy thereof any court of office,
- Any other matter which may be prescribed.

The Act also referred that every order made by the Registrar of Copyrights or the Copyright Board under this Act for the payment of any money or by the High Court Division in any appeal against any such order of the Copyright Board shall be deemed to be a decree of a Civil Court and shall be executable in the same manner as a decree of such court.

## **Collective Administration of Copyright and Copyright Society**

The Act contains a number of provisions for the collective administration of Copyright. Collective administrCopyrightthe Copyright means the management and copyright of copyright in a society of owners of such creation. It also discusses the formation and management of the Copyright Society in Bangladesh. An owner alone is not able to keep all the records of the uses of his works. However, if any society kept the records, the owner would have a better position to keep the records using his work due to the organizational facilities and strength. Strangely, no copyright society has yet been formed in our country.