

# Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law" Article 27 of the Constitution of the People's Republic of Bangladesh

## Copyright Act 2000: The Way Forward

by Mohammad Fazlul Karim

THE recent Copyright Act, 2000 (yet to be given effect to) is designed to amend and consolidate the law relating to copyright, repealing the Copyright Ordinance of 1962.

Copyright is defined by Black's Law dictionary as 'The right of literary property as recognised and sanctioned by positive law. An intangible incorporeal right granted by Statute to the author or originator of certain literary or artistic productions, whereby he is invested for a specified period with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.'

The law of Copyright is a branch of law relating to intellectual property. Copyright law affords maximum protection to authors, simultaneously securing certain benefits for the producers and publishers of the original work. The law of Copyright essentially rests upon the statutory principle, subject to certain restrictions in the interest of the public that the producers of original works, be it literary, dramatic, musical, artistic, cinematography, films, sound recording, broadcasting or computer software, should be entitled to certain benefits derived from the creation of brain, skill and labour.

The privilege and protection of Copyright law however do not subsist in works which are not original, which are libellous, immoral, obscene and positively of irreligious tendency. Similarly there can not be Copyright in works which though original, are against morality and public policy.

The first Copyright Act in England, popularly known as the 'Statute of St. Anne' was passed in 1709, amended subsequently from time to time until the promulgation of Copyright Act 1911 which in turn was designed to end the state of confusion in the law. On the basis of a report forwarded by the Copyright Committee formed in 1952, English Copyright Act 1956 was enacted which was subsequently

repealed by Copyright Designs and Patents Act 1988.

The pre-independence copyright statute in the subcontinent was based on its English counterpart. The Copyright Act 1911 and Copyright Act 1956 respectively formed the basis of Indian Copyright Amendment Act 1914 and 1957. The recent Copyright (Amendment) Act 1994 in India has sought to extend copyright protection to computer software and database.

In Pakistan, Copyright Ordinance, 1962 which is continuing in Bangladesh till today was promulgated with the meaning of Copyright in Section 3 (1) as the "exclusive right, by virtue of and subject to the provision of the Ordinance embracing the literary, dramatic or musical work, the artistic work, cinematography, to do and authorise the doing of the acts of reproduction in any material work, to publish the work, to perform the work in public, to produce, reproduce, perform or publish any translation of the work, to use the work in cinematographic work or make a record, to broadcast or communicate the broadcast by any means, to make adoption and to do in relation to a translation or an adoption of the work as mentioned above."

The Ordinance provided for Registration of Copyrights in a prescribed manner with the Registrar of Copyright (S.39) or assignment of Copyright etc. (S.40). Copyright Ordinance, 1962 also made provisions for International Copyright, making provision for applicability of works of certain international organization (S.53) and Copyright to foreign works (S.54).

The 1962 Ordinance provided eventuality as to infringement of Copyright (S.56) and provided both Civil remedy (S.60) by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right and penal remedies punishable with imprisonment and/or fine (S.76-95).

The Copyright Ordinance 1962

also sought to incorporate certain provisions of International Conventions for the Protection of Literary and Artistic Works 1886, otherwise known as the 'Barne Convention', which was further amended by Paris Convention, 1971. There are other International Conventions for Protection of Copyright among the state-parties such as the Universal Copyright Convention, 1952 and has caused deep concern to owners of Copyright of member countries.

Section 32 of English Copyright Act 1956 enabled Her Majesty, who may, by order in Council make provision for applying the provisions of the Act specified in the order, in the case of a country other than the country which is a party to a Convention relating to copyright, to which United Kingdom is also a party, to which those provision of the Act do not extend in respect of Copyright if satisfied that adequate protection is required to begin to the owner of the Copyright under the Act.

S.54 of our Copyright Ordinance 1962 corresponding to the Section 68 and 69 of Copyright Act, 2000 authorises that the Government may, by order, published in official gazette, direct that all or any of the provisions of the Act shall apply to the works first published in foreign countries to which the order relates, in a manner as if they were first published in Bangladesh.

In spite of remedies provided and the restrictions imposed by the Act book piracy continue in the nature of reproduction of substantial parts of a work. Piracy often consists of unauthorised adoption, translation and incorporation of original literary work.

The Copyright Act 2000 not only recognises book piracy as an ever growing evil but also appreciates incorporeal character of copyright. The infringer has no possessory right or any kind of title in infringing part of the work and the pirate who comes with unclean hand is not entitled to any consideration in a Court of Law and such work of book piracy which in itself is an offence

can not be protected from invasion.



make endeavours to accommodate these conflicting parties.

Copyright is a right to property. The importance of Copyright was stressed by Trollope by saying "Take away from English authors their Copyright and you would very soon take away from England her authors."

The growth of Copyright is the result of fast developed mechanical means of reproduction. The importance of Copyright has increased with the technological advancement through modern mass media of dissemination.

In spite of stringent Copyright Act and various international conventions for protection of rights of the authors, printers and publishers, infringement continues. The law of Copyright is concerned with the triangle of forces being the writer, the public and the publisher or the disseminators and our new Act has tried to

make the moral of the Copyright Act 2000 is based on the principle that no man shall steal what belongs to another. In recent times the Indian Higher Judiciary has gone as far as calling infringement of copyright as 'theft'. The law does not permit one to make a profit from the work of another and accrue benefit for himself out of the work produced by the labour, skill and capital of another. But the recent trends in the fast growing dissemination very often reminds us of the often quoted but frequently forgotten Eighth Commandment "Thou shalt not steal".

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