



WORLD BOOK AND COPYRIGHT DAY

# Tackling piracy-The context of Bangladesh

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WHILE use of computers and the Internet proliferates, and the texts of books can be produced onto discs and cassettes, around the world still most of the peoples depends on printed books. EBooks have been precious tools for documenting and transmitting learning and knowledge through generations and works as a repository of our cultural heritage. Therefore, reading of books as important today as ever. That is why, the intellectual creations like a book deserves special attention and protection. Let us examine on the eve of the book and copyright day, what is the position of the protection of copyright in our country.

World Book and Copyright Day - established in 1995 by UNESCO's General Conference will be celebrated throughout the world on April 23. In choosing April 23 as World Book and Copyright Day, UNESCO drew inspiration from a Catalan tradition. On this day in Catalonia, numerous book fairs and street festivals are held and customers are offered a rose with every book they buy. Again April 23 is a symbolic date for world literature. On this date and in the same year of 1616, Cervantes, Shakespeare and Inca Garcilaso de la Vega all died. It is also the date of birth or death of other prominent authors such as Maurice Druon, K.Laxness, Vladimir Nabokov, Josep Pla and Manuel Mejia Vallejo. Therefore, it was a natural choice for UNESCO's General Conference to pay a worldwide tribute to books and authors on this date.

By celebrating this Day throughout the world, UNESCO seeks to promote reading, publishing and the protection of intellectual property through copyright. But piracy at the national and international level is a great threat against the copyright. In this article, I attempt to identify the nature and scope of piracy of copyright and examined the measures for tackling the piracy taken at the national and international level.

The nature and scope of piracy and its long term bad impacts on society

To some persons the term 'piracy' may have a slightly romantic connotation conjuring up of making things so simple (i.e., producing a very costly book in a very cheap rate). But there is nothing romantic or boasting about the pirates of intellectual property. Piracy, in the context of intellectual property is not a term of art, it means the mere reproduction, for the purpose of seeking a profit, of the property of the copyright owner with out his/her permission. They are criminals, usually operating on a large and organised scale, engaged in the theft of the products of other peoples' talents, skills and investment. The real nature of piracy is revealed by the following considerations

1. The pirate never publishes a new book or records a new song or performance.
2. The pirate pays no royalties to the author, the illustrator, the translator; or to the composer, arranger, lyric writer or performer, or to any of the other creative people who have contributed to the original work.
3. In the case of books, the quality of the pirated edition is often very poor; this may not matter in the case of fiction, but in text books eg medical books on surgery - badly reproduced diagrams and illustrations could be quite serious.
4. The pirate makes no payment to the original publisher or to the record or film producer, in respect of production, editorial or distribution costs.
5. The pirates take no financial risks whatsoever. They concentrate only on works, which are very popular and best-seller. In fact very few book or recording are financially successful, perhaps at the first instance these books are produced at a loss by the legitimate publisher or producer, and he has to apply or supply part of the profits from the one successful product to recoup the losses on the other nine. The pirate keeps all his profits.
6. Pirates do not discriminate between foreign and national works; the latter are just as vulnerable to piracy as are foreign works.
7. Not only does piracy cause financial loss to the various interests responsible for the creation, production

and distribution of legitimate material, but also it leads to considerable direct and indirect loss of revenue to Governments from unpaid taxes.

However, someone may think that the provision of cheap books or sound recordings or films, especially those needed for education, is a desirable objective, particularly in developing countries. But to pursue this objective through piracy is doubly misguided.

First: it is unjust to those who create, produce and distribute legitimate recordings and editions and

Second: such a policy inhibits the development of local authors and local publishers, thus prolonging dependence upon foreign music and literature.

- date copyright law, which will include at least following elements-
- A full range of rights for the various categories of protected works;
  - An effective and vigilant copyright office;
  - Recognition and promotion of copyright societies;
  - Powers to search for and seize evidence of infringement or of the commission of offences, and to obtain information relating to such activities.
  - Rules of evidence which ensure that right owners can effectively enforce their rights through court proceedings without unreasonable hindrance from technical

measures, the law has become a mere paper tiger. As per study conducted by this writer, there are only a few cases, which are filed under the copyright law and even the number of reported cases (as reported in the law reports like DLR, BLD, BLC etc) in the country relating to copyright is very marginal and not so mentionable. One may draw conclusion from the above observation that piracy is minimal in our country, but that is not the fact. In real sense, although the incident of piracy is frequent, the action to combat piracy is still at the very minimum level. Therefore mere provisions for enforcement through legal proceedings, either civil or criminal, will be worthless if actions and remedies are not adequate and effective.

**B. International dimension of copyright**  
Copyright has become international in character after the signing of a number of international copyright agreement among the member countries under which one member country protect works of creators from other member countries. Copyright as provided by the Copyright Act of Bangladesh is valid only within the borders of the country. To secure protection to Bangladeshi works in foreign countries, Bangladesh has become member of the following international conventions on copyright and neighbouring (related) rights:

- i. Berne Convention for the Protection of Literary and Artistic works, 1886 (accepted by Bangladesh on May 4, 1999)- Berne Convention is the oldest international agreement exclusively dealing with copyright. Under the Berne, a nation must at least provide for protection of six rights: translation, reproduction, public performance, adaptation, attribution (paternity) and integrity.
- ii. Universal Copyright Convention, 1952 (accepted by Bangladesh on May 5, 1975)- This convention was made under the auspices of the UNESCO with a desire to ensure in all countries copyright protection of literary, scientific and artistic works and thereby to facilitate a wider dissemination of works of the human mind and increase international understanding.
- iii. Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement), 1994 under the World Trade Organization (WTO) (accepted by Bangladesh on January 1, 1995 as part of the WTO package of agreement)- It is the most comprehensive agreement relating to intellectual property rights and debate is continuing regarding this agreement around the world, due to paucity of space, which are not included here. TRIPs include within its ambit almost all the previous agreement; in addition, the TRIPs agreement adds a significant number of new or higher standards. This agreement contains very strict enforcement measures.

Therefore all the works of Bangladeshi creators will get copyright protection in any of the member countries of the above-mentioned international conventions and agreement. It is also noteworthy that the Copyright Act of Bangladesh under section 68-70 guaranteed protection to the works of other member countries and international organisations on the basis of reciprocity.

**Concluding remarks**  
A book is a treasure, an instrument for the unprecedented democratisation of knowledge and culture, a key that opens doors to the greatest number of people. It is the meeting point of the masses and the elite. Thus books play an irreplaceable role as a means of knowledge that deepen understanding and develop curiosity. It is also a means of pleasure, which provides flights of imagination and relaxation. In every sense, time spent in reading is time well spent.

Therefore, on the eve of the book and copyright day, it is our prime and sacred duty not only to promote books and reading, but also to take steps to aware the peoples about the copyright and say 'no to pirated copies', which will encourage the writers, musicians, painters and other creators to continue their artistic and intellectual efforts.

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## World Intellectual Property Organization (WIPO) has tailored its 2005 World Intellectual Property Day message and publicity material towards young people. The over-arching objectives are:

- 4 To encourage young people to recognize their own ability to create
- 4 To increase understanding of how protecting IP rights helps to foster creativity and innovation
- 4 To raise awareness of the importance in daily life of patents, copyright, trademarks and designs.



Thus piracy must be eliminated if national culture, national record production, national authorship and publishing are to be protected and encouraged. To condone piracy because of its apparent benefit to the dissemination of information and culture or the cause of education will, in the long run, be contrary to the interests of a country.

**Tackling piracy: the context of Bangladesh**  
Piracy constitutes a disregard for legal rights and obligations towards the intellectual creators upon which the society itself is guided for future aspiration and that is why respect for law and order in an important sector of human society is seriously undermined by the activities of pirates. It has clearly become the duty of the State to take steps to combat this serious public mischief. The measures needed are described in the below-

**A. An up-to-date National Law on Copyright**  
To combat piracy, every country must have an up-to-

- rules;
- Penal provisions designed to cover all forms of piratical activity, backed by penalties which are effectively deterrent;
  - Control over the importation of copies of books (and other protected works, notably sound recordings), irrespective of whether the imported copies were made with or without the authorisation of the copyright owner;
  - A full range of remedies including, injunctions, both interim and permanent, accounts of profits, delivery up or destruction of infringing articles, awards of damages and reimbursement of costs.
- It is quite fascinating that new copyright Act of Bangladesh, which is enacted in 2000 replacing the earlier law contains all most all the above elements or similar provisions. But the problem is due to lack of awareness and non-effective administrative and judicial

## HUMAN RIGHTS advocacy



# Monitor needed to protect rights in counter terrorism

AS the international community is poised to establish a special rapporteur of the United Nations on protecting human rights in counter terrorism efforts, a small number of states led by China, Russia and United States are colluding to block the establishment of an effective mandate, a group of leading international human rights organizations said.

UN Secretary-General Kofi Annan, U.N. High Commissioner for Human Rights Louise Arbour, most Commission member states, national human rights institutions, and a large number of NGOs have endorsed the call for a United Nations investigator. The special rapporteur would monitor counter terrorism laws and practices for their compatibility with human rights, act to prevent human rights violations arising from counter terrorism measures and provide technical assistance to states.

The countries blocking the mechanism have demanded a number of unacceptable amendments designed to kill or hollow-out the mandate.

Mexico and many other states proposed the special rapporteur following a clear conclusion by Robert Goldman, the Commission's Independent Expert on the protection of human rights and fundamental freedoms while countering terrorism, that there is a pressing need for monitoring under a single mandate that has a comprehensive overview of the relationship between human rights and counter terrorism measures.

Amnesty International, Human Rights Watch, the International Commission of Jurists, the International Federation of Human Rights Leagues and the International Service for Human Rights share the assessment of the Independent Expert that a broad range of human rights have come under increasing pressure or are being violated by States in the context of and counter terrorism initiatives.

The organizations called on the Commission to act now to address meaningfully one of the greatest human rights challenges presently faced by the international community.

Source: Human rights watch.



In addition to these three permanent Security Council members, Australia, India and Pakistan have sought to undermine the initiative currently under consideration by the U.N. Commission on Human Rights meeting in Geneva.

Nearly four years after the September 11, 2001 tragedy and the Security Council mandate for robust international action to combat terrorism, and despite more than three years of discussion in the U.N. human rights system, China has argued that it is too early for establishing such a special rapporteur.

## RIGHTS corner



# Protecting workers rights

IN the last decade the global expansion of the market economy has produced a "world without walls". In the rush to find cheaper and quicker ways to produce shoes, apparel, and other labor-intensive goods for the global marketplace, multinational corporations are moving much of their manufacturing to countries where basic legal protections for workers are non-existent and union organizing is prohibited or discouraged. Workers drive the new international economy, yet millions of them-typically women and children-daily endure substandard working conditions ranging from inadequate wages to inhumane hours to life-threatening hazards in the workplace.

Workers are largely unprotected from these abuses by either their own governments or the international system. Though the International Labor Organization has articulated labor rights standards for 80 years, these assume that national governments will enforce them. Unfortunately, many governments lack the capacity and often the will to do so. Even in the United States, effective regulation and protection of workers has been eroded at the low-wage end of the labor market.

Such consequences have sparked a growing public demand for corporations to take responsibility for a range of human rights and environmental problems in countries where they operate. Human rights first's own commitment to pursue labor rights as human rights was a response to these developments. The challenge is to create accountability-independent, transparent, and enforceable mechanisms for ensuring that human rights standards protect ordinary people.

We are convinced that local,

national and international human rights groups need to work together to leverage consumer interest in labor practices and company brand sensitivity, to help protect workers' rights. Enabling consumers to become well-informed about specific company practices - piercing the veil between brand names and a web of abusive contractors and suppliers - creates the kind of market pressure that strongly encourages corporate compliance with international human rights standards in a regular and systematic way. Much work needs to be done to ensure that corporate social responsibility becomes more than a passing fad and translates into real protection for workers.

-Law Desk.



## HC order against Shahidur's removal stayed

The Supreme Court stayed for six months a High Court (HC) order that had earlier declared void the president's order removing HC additional judge Syed Shahidur Rahman from his office.

The five-member bench of the Appellate Division led by Chief Justice Syed JR Mudassar Husain passed the order granting the leave to appeal filed by Advocate Idrisur Rahman against the High Court order.

The president in line with the recommendation of the Supreme Judicial Council removed Shahidur on charge of bail fixing on April 20 last year. On hearing a writ petition filed by Syed Shahidur Rahman challenging the validity of the president's order, a HC bench declared the removal illegal on February 2. Dr Kamal Hossain assisted by Barrister Tanjib-ul Alam and Barrister Sarah Hossain moved for the petitioner while Barrister Azmalul Hossain for Syed Shahidur Rahman. Although he was no party in the High Court, Supreme Court lawyer Advocate Idrisur Rahman filed the leave to appeal against the HC order in the Supreme Court in public interest. - The Daily Star, April 26.

## Indian deputy HC points at dialogue

The existing misunderstanding between Bangladesh and India should be resolved through dialogue as Delhi is always eager to maintain good relations with Dhaka, an Indian diplomat said. "Isolated problems in the border areas are not unusual as India and Bangladesh share a large border line. But there is a scope of discussion," said S Chakravarti, Indian deputy high commissioner to Bangladesh. The diplomat was speaking at a roundtable on 'Bangladesh-India relationship in the light of liberation war', organised by the Mukti Juddha Samannay Parishad in the capital. On the border skirmishes between Bangladesh Rifles (BDR) and Indian Border Security Force (BSF), he said the BSF has no intention to attack the BDR.

Chakravarti regretted that the incidents took place at a time when the chiefs of the BDR and BSF were holding talks in Dhaka to resolve the existing problems on the border.

The diplomat felt that both the BDR and BSF should aim at stopping illegal intrusion and other illegal activities. "India does not consider Bangladesh as a small state in terms of population and natural resources," he said, adding that both the countries could go forward through mutual understanding. Chakravarti said India proposed to Bangladesh a Free Trade Agreement, and if Dhaka finds it beneficial, it should move forward. - The Daily Star, April 26.

## Judge Faizee's Bar certificate cancelled

Bangladesh Bar Council in an unprecedented move cancelled the enrolment certificate of High Court Additional Judge Faisal Mahmud Faizee for providing false information during enrolment and his failure to disprove the allegation about his LLB exam result.

The Council, statutory body of legal practitioners, at a meeting also decided to file a criminal case against him for giving false information in the affidavit he submitted when he had applied for Bar Council's certificate to practise law as an advocate.

The Bar Council criticised the decision of the chief justice (CJ) to reinstate Faizee in his judicial tasks in the High Court bench and decided to request the CJ to withdraw him.

Vice Chairman of Bar Council Barrister Rakanuddin Mahmud yesterday informed the press about the decisions taken at the meeting he had chaired. The attorney general, ex-officio chairman of the council, did not attend the meeting, as he was indisposed.

The Council took the decision in accordance with Section 62 (5) of The Bangladesh Legal Practitioners and Bar Council Order and Rules, which empowers the council to suspend or revoke enrolment of an advocate. When a lawyer becomes an additional judge, his certificate of enrolment issued by the Bar Council remains withheld.

Faizee applied for Bar Council's enrolment certificate showing a provisional LLB certificate. Even Faizee's father Mohammad Faiz, who filed the contempt suit against the two dailies, failed to produce Faizee's LLB certificate before court when he filed the case. - Prothom Alo, April 26.

## EC rejects Bar Council appeal to observe CCC elections

Chief Election Commissioner (CEC) MA Syed rejected Bangladesh Bar Council's appeal for permission to observe the upcoming Chittagong City Corporation (CCC) polls describing the organisation politically biased and inexperienced.

The CEC at a meeting of the Election Commission (EC) ignored the opinion of Election Commissioners AK Mohammad Ali and M Munsef Ali in favour of allowing the council to observe the CCC polls slated for May 9. The rejection decision came when the EC Secretariat officials pointed out that the policy on poll observer does not allow an organisation, which does not have any previous experience, to function as poll observers.

Meeting sources said a senior official told the CEC that he personally knows some of the Bar Council leaders who have strong political bias. The Bar Council appealed to the EC for permission to engage 86 of its members to observe the CCC polls.

A number of organisations have already applied to the EC for permission to observe the polls, but only those who observe polls regularly will be allowed to do the job, said sources. Meanwhile, the government announced public holiday for areas under Chittagong City Corporation on May 9, the election day. - The Daily Star, April 27.

## Faizee has no moral right to remain a judge

Lawyers at a rally said the High Court's Additional Judge Faisal Mahmud Faizee has no moral right to remain a judge when Bangladesh Bar Council has revoked his certificate of enrolment.

They also threatened to file a case against him for alleged certificate tampering and giving the Bar Council wrong information on his age.

Earlier on Sunday Bangladesh Bar Council cancelled Faizee's enrolment certificate for providing it with false information and failure to prove the allegation regarding his LLB certificate untruth.

The rally organised by Sammito Ainjibi Samannay Parishad was held at the Supreme Court Ainjibi Samiti Bhaban. It gave reception to the newly elected office-bearers of Supreme Court Bar Association (SCBA). "It will amount to dishonouring the court, if the word 'justice' is used before the name of Faizee," former law minister Abdul Matin Khusrusaid.

The ongoing protest of the SC lawyers will be pursued to restore people's confidence in the court, he added. - The Daily Star, April 27.

## Demarcation of constituencies EC violates rules

The Election Commission (EC) is violating the demarcation rules by not taking any step to demarcate the parliamentary constituencies for the coming general elections. Demarcation has to be made after every census but the EC has been sitting idle since the last census conducted in 2001 before the eighth parliamentary election. Sources said demarcation is necessary to balance the constituencies in terms of number of voters that varies from one constituency to another.

"The commission does not have any plan at this moment to demarcate the parliamentary constituencies. We do not initiate such steps. If anybody raises the demand, then we consider it," Election Commissioner M Munsef Ali told The Daily Star.

However, the Delimitation of Constituencies Ordinance 1976 says delimitation of territorial constituencies has to be made upon completion of each census for the purpose of general elections to be held after the census. It is unlikely that the EC would take any initiative to demarcate the constituencies before the ninth general elections scheduled for early 2007, the sources said. According to the 2001 census, 67 constituencies have less than two lakh voters each, 191 constituencies have over two lakh voters and the rest 42 constituencies have more than three lakh to over six lakh voters. The discrepancies have made a mockery of the ceiling of election expenditure as the ceiling of election expenses is equal for all candidates contesting from small and big constituencies, sources said. They cited the example of India where the ceiling of election expenditure is not fixed for all. In accordance with the Delimitation of Constituencies Ordinance, the EC has to delimit the territorial constituencies and publish the list of the demarcated constituencies. - The Daily Star, April 28.

## Corresponding with the Law Desk

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