

**LAW OPINION**

# Legal protection of databases

**FOR YOUR INFORMATION**

*In the absence of specific legal provision on database protection, data can be leaked and utilised in a wrongful manner. The entrepreneurs will face huge loss, which will discourage them to take similar ventures.*

**DR. MD. ERSHADUL KARIM**

**D**ATABASES play instrumental role in the development of global information infrastructure. They are developed with aims, inter alia, for faster services in all service sectors like recreation and tourism, healthcare, banking, insurance, real estate etc. Databases contain data on basic information collected, arranged, classified and stored targeting these sectors. Like others, the Government of Bangladesh has also been developing different kind of databases, e.g. database on voter registration, etc. Non-commercial nature of the government databases keep them away from copyright domain. Whereas, these abovementioned databases easily accessible online can be copied without the permission of the owner or developer, modified and re-used by others using sophisticated devices. Even though in some jurisdictions, such databases enjoy copyright protection once they meet some criteria, the status of these databases which can be termed as 'non-original databases' is somehow obscure in Bangladesh context as they lack the requisite originality or creativity to qualify for copyright protection, even though they require substantial amount of investment and intellectual input and effort.

A number of European countries and Mexico have introduced sui generis form of legal protection of such 'non-original' databases from copyright violation. The Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases defines 'database' in article 1(2) as "a collection of independent works, data or other materials arranged in a systematic or methodical way and

individually accessible by electronic or other means". Exactly same definition is incorporated in the World Intellectual Property Organization (WIPO)'s proposed Convention on Legal Protection of Database which is in the consultation process for years. Same is the position under the Copyright, Designs and Patents Act, 1988 of the United Kingdom.

Under article 3(1) of this EU Directive, 'databases which, by reason of the selection and arrangement of their contents only, constitute the author's own intellectual creation shall be protected as such by copyright.' Therefore, it is apparent that if any data is systematically or methodically arranged in a way that their contents constitute author's own intellectual creation that shall be protected by copyright. Pertinent to mention here that the very content of the database can be protected under general copyright law and the same is confirmed by article 3(2) of the EU Directive. The copyright holder of such 'non-original' databases granted for systematic and methodical arrangement of contents, copyrighted or not, enjoys some common rights under this Directive. It is also known as the 'sweat of the brow' or 'industrious collection' doctrine which asserts that the copyright should be extended as a reward for hard work and investment for compilation work to develop the database.

In the USA, under the concept of 'compilation copyright', the compilation of works are similarly protected if the work is selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The Agreement on Trade-Related Aspects of Intellectual Property Rights has considered the word 'compilation' in article 10(2) and provides that compilation of data, which by reason of the selection and arrangement of their contents constitute intellectual creations, shall get copyright protection. Berne Convention for the Protection of Literary and Artistic Works, 1979 has used the word 'collections' and covers collections of literary or artistic works like encyclopedia and anthologies under copyright protection as they constitute intellectual creations by reason of the selection and arrangements of contents. Similar language is adopted in article 5 of the WIPO Copyright Treaty, 1996.

In Bangladesh, within the ambit of the Copyright Act, 2000, the literary, dramatic, musical or artistic work, cinematograph film or photograph, sound recording and computer program and broadcast reproduction right or performer's right, etc. can be protected. From the forms available in the website of the Copyright Office of Bangladesh, it is also certain that the copyright applications can be made for software, website, and mobile apps. Albeit, the status of

these 'non-original' databases developed by systematic and methodical arrangement of contents are certainly uncertain. As a result, the status of USA's 'compilation copyright' or internationally recognised 'collection' are not clear in Bangladesh context also as it is apparent that the word 'compilation' as used twice in the Copyright Act, 2000 i.e. sections 72(1)(2) explanation and 79, and the word 'collection' as used in a number of instances in the Act do not intend to include these non-original databases.

Fortunately, section 54(2)(b) of the Information and Communication Technology Act, 2006 has defined the words 'computer database' as 'representation of information, knowledge, facts, concepts, or instructions by way of texts, image, audio or video prepared in a formalised manner through computer, computer system or computer network' and provides for punishment for downloading, copy or extraction of data from any computer, computer system or computer network without permission.

Nevertheless, it is uncertain if the same provision can be applied in case of online databases.

In the absence of specific legal provision on database protection, data can be leaked and utilised in a wrongful manner. The entrepreneurs will face huge financial loss, which will discourage them to take similar ventures leading to slow progress towards government's aspired 'digital Bangladesh'. Even though no such thing has yet tested by the municipal courts of law, due to the wide use of computer and internet and the development of database industry, it may be anticipated that such issues will be an issue of contention in the near future. Therefore, the copyright authority can take initiative to clarify its stand regarding the protection of databases.

In some jurisdictions these databases can be protected through the unfair competition or misappropriation law. An aggrieved person in Bangladesh may, for the time being, find recourse in different provisions of the Penal Code, 1860. In order to prevent existing employees to copy and use the content of the database in future, the employment contract should be drafted carefully to prevent data theft. The public in general who can have the access to the database and they are also able to copy the content for possible future use. For them, the database entrepreneurs can think of introduction of stricter terms and condition even before the use of the content of the database, where a prospective user need to complete an online agreement containing the rights, obligations, duties and responsibilities of the website user in very clear and precise manner.

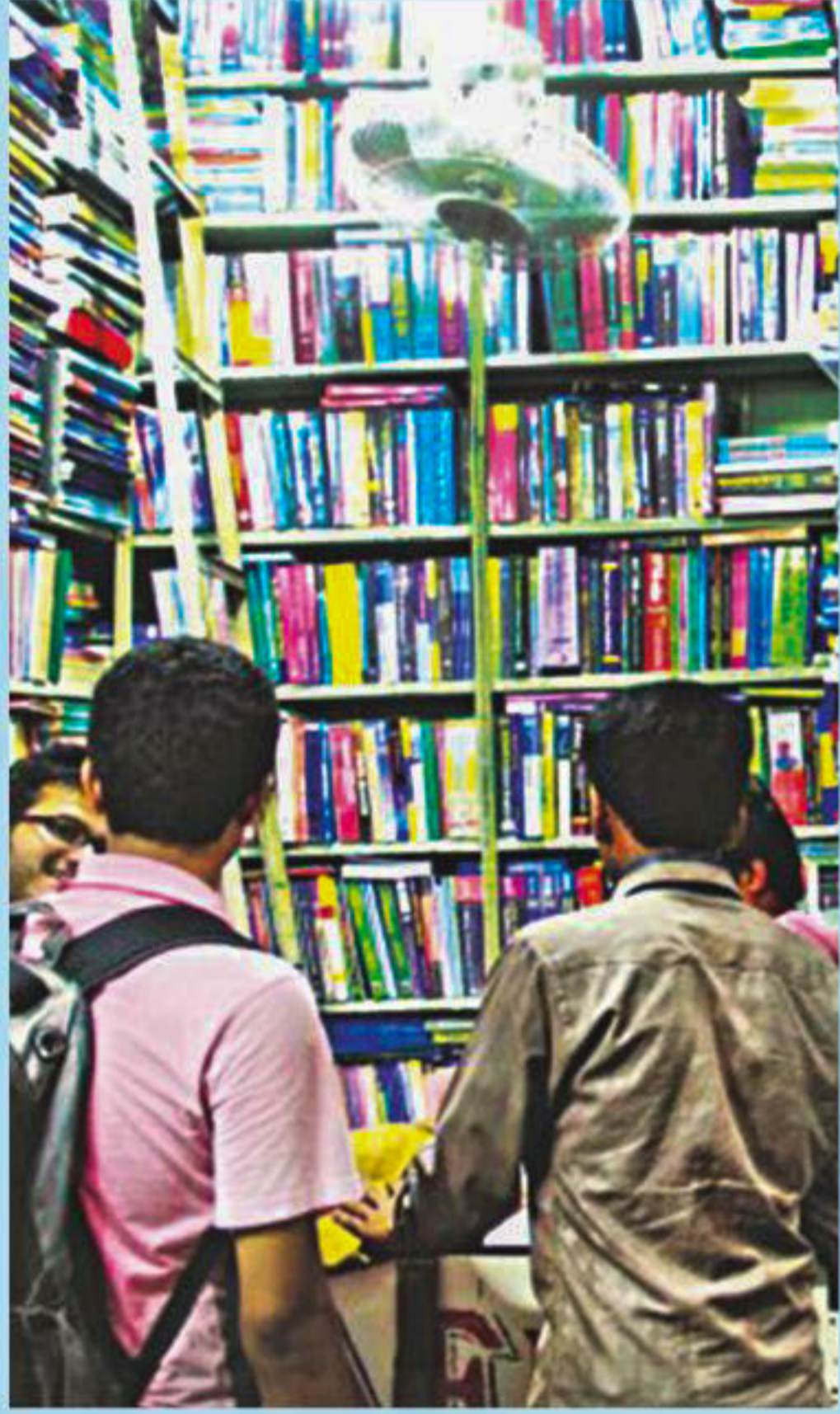
## Hitchhiker's guide to law books

**RAIHAN RAHMAN RAFID**

**Y**OU would not read a law book unless you are a law student, and let us not talk about exceptions here. They are notorious for being very long, dull, and often very difficult to read. Safe to say some lawyers make money deciphering the many riddles that hide in law books. The money is an incentive - the word "incentive" here means "an offered reward to persuade you to do something you don't want to do - to read long, dull, and difficult books" as Lemony Snicket writes in his book *The Bad Beginning*.

It is hard to explain how much reading a law degree involves other than saying that there are a lot of law books! There seems just no end to laws, cases and law books and here arises the problem. How many books can you buy, when law books aren't cheap at all? Some books are found as e-book for free and cases are also available on internet. But law books hold more than just law and cases; they contain the editorial notes and structure that the authors and scholars who published the book set forth as the manner and order in which those cases should be studied and compared.

Law books are usually expensive but there are still some places where the



THE WRITER IS A SENIOR LECTURE AT THE FACULTY OF LAW, UNIVERSITY OF MALAYA, MALAYSIA.

**LAW EVENT** **Learning about genocide and justice**

**C**ENTER for the Study of Genocide and Justice (CSGJ) of the Liberation War Museum organised a month-long certificate course on the issue of genocide and justice from 13 May till 4 June, 2016. The course, organised for the 4th time, was attended by 22 participants including students from both graduate and undergraduate levels, and professionals such as lawyer, banker, journalist and researcher.

The course was inaugurated by CSGJ's Chairperson Professor Emeritus Dr. Anisuzzaman, University of Dhaka. In his opening speech, he urged the participants to investigate the history of liberation war and the acts of genocide for the better assurance of justice for the victims and survivors of 1971.

Participants attended sessions conducted by the prominent scholars and practitioners in the field of international criminal law, genocide and history. Resource

Khan, Chief Coordinator of the Investigation Agency, ICT-BD; Barrister Tureen Afroz, Prosecutor of ICT-BD; Advocate Zead-Al-Malum, Prosecutor of ICT-BD; Dr. Katherine Li, Assistant Professor of Modern Languages, North-South University; Mofidul Hoque, Director of CSGJ and Trustee of Liberation War Museum; and Zayed Hasan, Coordinator of Samajik Sahayata Udyog.

Towards the end of, the course participants were divided into different group to prepare a work plan to be realised by utilising the lessons of this course.

In closing ceremony, Barrister M. Amir-Ul Islam, Drafter of the 1971 Proclamation of Independence and one of the members of the 1972 Constitution Drafting Committee, appreciated CSGJ for taking such an initiative to train up new generation regarding the trial of the perpetrators of genocide and crimes against humanity committed in



persons in the course included, Dr. M. A. Hasan, Convener of War Crimes Facts Finding Committee; Dr. Muntassir Mamoon, Professor of History, University of Dhaka; Shahriar Kabir, Author and Human Rights Activist; Professor Dr. Meghna Guhathakurta, Executive Director of Research Initiative Bangladesh; Barrister Sara Hossain, Advocate, Supreme Court of Bangladesh; Dr. Ashfaq Hossain, Professor of History, University of Dhaka; Dr. Abu Md. Delwar Hossain, Professor of History, University of Dhaka; Sheikh Hafizur Rahman Karzon, Associate Professor of Law, University of Dhaka; Mohammad Abdul Hannan

Bangladesh. He specifically highlighted the importance of domestic trial of international crimes in today's world, and pointed out the relevance of ICT-BD for many other countries which are intending to come out of 'culture of impunity' to ensure justice for the victims.

Ziauddin Tariq Ali, Trustee of Liberation War Museum and Mofidul Hoque, Director of CSGJ wished the participants would continue imparting the lessons of this course in the days to come at both home and abroad.

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**LAW EXCERPTS** **Ali won in the court**  
**Ali won in the ring**

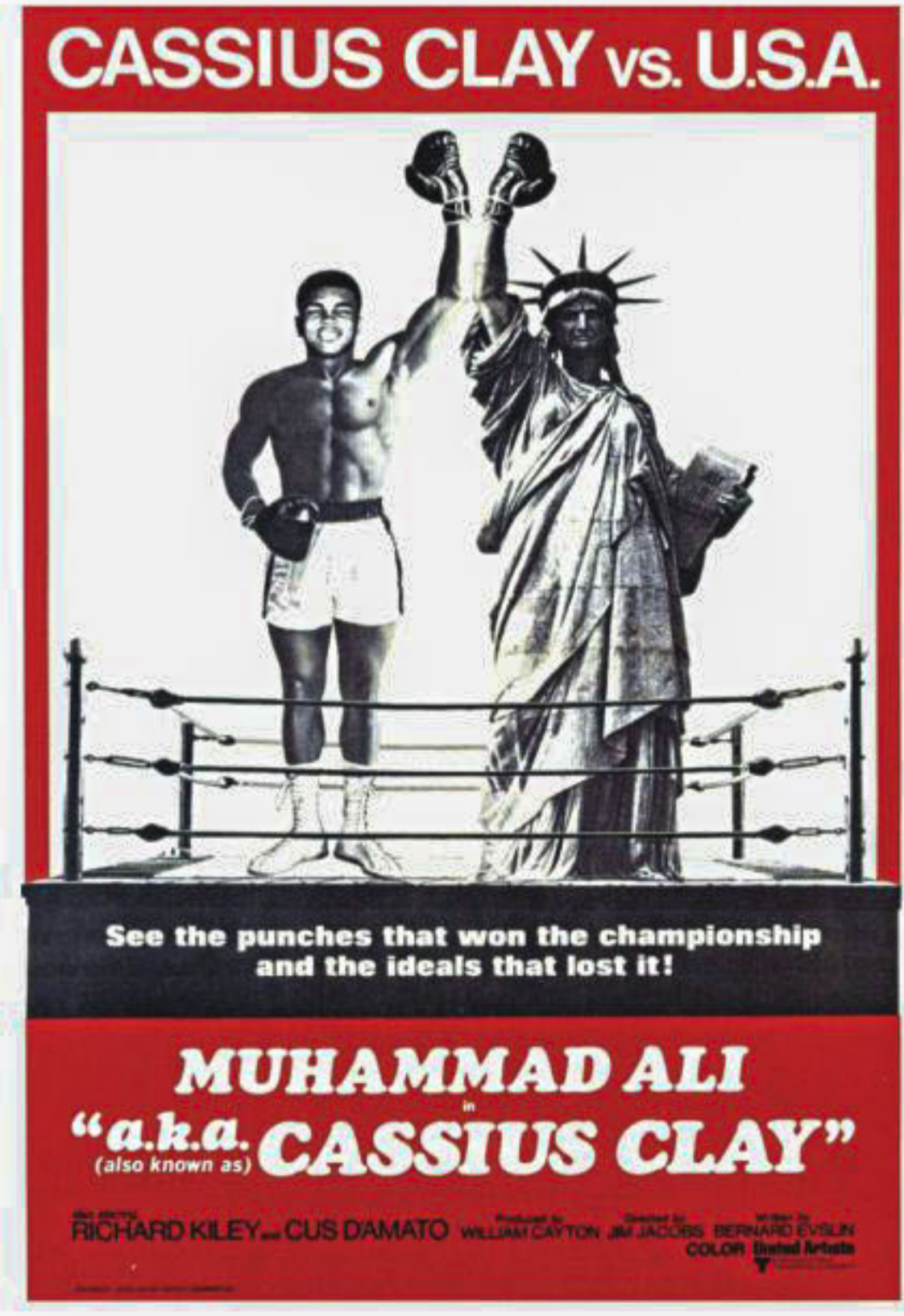
ADIB SHAMSUDDIN

**W**HEN Muhammad Ali Clay made entrance onto the scene in 1960 he was an 18-year-old amateur boxer with brashness and youthful exuberance. From the beginning he transcended boxing, making bold predictions—usually correct—about what round he would stop his opponents in; his hilarious doggerel poetry was recited by school kids who had never seen a boxing match.

For many of us Muhammad Ali was a childhood role model, an exemplary Muslim, a striving athlete, and a fighter who refused to shed blood. As we mourn his loss today, we also reminisce his outspokenness, his somewhat blunt way of saying what the truth is. We briefly speak of the case that set his stance for righteousness, the case of *Clay v United States*

Athletic Commission suspended his boxing license and the World Boxing Association stripped him of his title. Other boxing commissions followed suit. He was indicted by a federal grand jury on May 8 and convicted in Houston on June 20. The trial jury was composed of six men and six women, all of whom were white. The Court of Appeals affirmed and denied the appeal on May 6, 1968.

The Supreme Court held that, since the appeal board gave no reason for the denial of a conscientious objector exemption to petitioner, and it is impossible to determine on which of the three grounds offered in the Justice Department's letter that board relied, Ali's 1967 conviction must be reversed. The Supreme Court decision was handed down on June 28, 1971.



In their book *The Brethren*, author Bob Woodward and Scott Armstrong provided an account of the development of the case. According to that account, Justice Marshall had recused himself because he had been U.S. Solicitor General when the case began, and the remaining eight justices initially voted 5 to 3 to uphold Ali's conviction. However, Justice Harlan, assigned to write the majority opinion, became convinced that Ali's claim to be a conscientious objector was sincere after reading background material on Black Muslim doctrine provided by one of his law clerks. To the contrary, Justice Harlan concluded that the claim by the Justice Department had been a misrepresentation. Harlan changed his vote, tying the vote at 4 to 4. A deadlock would have resulted in Ali being jailed for draft evasion and, since no opinions are published for deadlock decisions, he would have never known why he had lost. A compromise proposed by Justice Stewart, in which Ali's conviction would be reversed citing a technical error by the Justice Department, gradually won unanimous assent from the eight voting justices.

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bookshops sell them at a reasonable price or one can even buy second hand books from these shops. Moreover, you can even exchange books or sell the books to them when you do not have the necessity anymore. In Dhaka, the most popular places for finding law books are Nilkhet, New Market, Bangla Academy and Dhaka University Publication Centre at TSC; even students coming outside Dhaka prefer buying books from here for the price being low and reasonable in the bookshops. But you will have to bargain a lot here to get your book for a reasonable price, as more often than not sellers here try to diddle people by asking an amount more than the price they would actually sell it for.

Furthermore, there are a good number of book shops in the Supreme Court area where books are sold in affordable price. You can look for law books at the ground floor of Dhaka High Court and also at the Judge Court premise. All the bookshops referred here are at Dhaka city and you are far away from the capital? Not to worry! Because, there are also shops outside Dhaka where you can buy law books from and of course in a price that you can afford.

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This is by no means an exhaustive guide to find law books; you can find many more after some arduous and enthusiastic digging. You will notice that all kinds of law books, English and Indian law books, law books written in Bengali, books written by different writers from Asia or England, are usually found in the aforementioned bookshops.

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