

## The Problem of Copyright Compliance in the Music Industry of Bangladesh: An analysis

Sadia Siraj<sup>1</sup>

Maruf Allam<sup>2</sup>

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*According to the 2015 Report of International Property Rights Index, Bangladesh in terms of Intellectual Property (IP) protection is 128th out of 129 countries. Moreover it has the highest copyright piracy rate in Asia. In this connection, one of the major victimized sectors is the music industry where the piracy rate is a shocking 96%. Availability of pirated musical works, absence of adequate incentives for musical actors and weak legal and social structures are mainly responsible for such an unhappy situation. This article examines the reasons for this shocking situation, seeks possible alternatives from international and foreign standards and provides some recommendations to improve copyright enforcement in music industry of Bangladesh.*

### Introduction

"Everyone has the right to the protection of the moral and material interests resulting from scientific, literary or artistic production of which he is the author"<sup>3</sup> - the proposition being the essence of intellectual property rights (IPRs) recognizes both moral and economic rights of the author to his/her creative works. Under the general framework of IPRs, copyright basically protects literary, scientific and artistic expression. Musical works are such expressions that can be protected under copyright laws. Bangladesh being a country with poor legal and social practice to protect one's creativity has been facing a substantial economic loss in its music industry. Inadequate economic security to the musical artists in return for their efforts, is said to be a common scenario in Bangladesh. The factors that are liable for such situation are, among others, frequent piracy, lack of adequate royalty, shortcomings in the law and absence of proper

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<sup>1</sup> The author is an Assistant Professor at the Department of Law & Justice in Southeast University, Bangladesh. She can be reached at :sirajsadia15@gmail.com.

<sup>2</sup> The author is a Lecturer at the Department of Law & Justice in Southeast University, Bangladesh. He can be reached at: marufallam@gmail.com.

<sup>3</sup> Article 27.2 of the Universal Declaration of Human Rights (UDHR), 1948 and article 15.1(c) of International Covenant for Economic, Social and Cultural Rights (ICESCR), 1966.

implementation of laws. To improve the copyright protection system, the international standard and implementation thereof in developed countries should be examined to enrich our legal and social order. In this backdrop, the present article critically assesses the overall protection mechanism of copyright in the music industry of Bangladesh. In doing so, relevant national and international laws concerning copyright protection are elucidated with a special focus on the present copyright scenario in the music industry of Bangladesh. The article concludes with a set of strategies that may be adopted to protect the music industry in Bangladesh.

### **Understanding the Idea of Copyright**

Copyright is an intellectual property afforded by law that protects the original artistic expressions of the creators.<sup>4</sup> The expression 'copyright' refers to the main act which, in respect of literary and artistic creations, may be made only by the author or with his authorization.<sup>5</sup> That act is the making of copies of the work. In fact, it is a bundle of rights including, *inter alia*, rights of reproduction, communication to the public, adaptation and translation of the work. However, there could be slight variations in the composition of the rights depending on the work. There is no copyright in case of ideas. It subsists only in the material form in which the ideas are expressed.<sup>6</sup> The purpose of copyright law is to promote the progress of science and useful arts. Copyright is the financial incentive that drives creative innovation.

### ***Copyright Law: International Regime and Norms***

The Berne Convention for the Protection of Literary and Artistic Works (hereinafter "the Berne Convention") is the most important international treaty standardizing copyright protection since 1886. However, the Berne Convention rests on three basic principles. The first principle deals with *national treatment* that denotes that works originating in one of the member states are to be given the same protection in other member states.<sup>7</sup> The second principle, automatic

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<sup>4</sup> Ayan Roy Chowdhury, "The future of copyright in India," *Journal of Intellectual Property Law & Practice* (2008): 102.

<sup>5</sup> Intellectual property is usually divided into two branches, namely (i) industrial property, which broadly speaking protects inventions, and (ii) copyright, which protects literary and artistic works. See World Intellectual Property Organization, *Understanding Copyright and Related Rights*, (WIPO Publication No. 909(E), 4.

<sup>6</sup> Jatindra Kumar Das, *Law of Copyright* (Delhi: PHL Learning Private Ltd., 2015), p. 177.

<sup>7</sup> Article 5 of the Berne Convention.

protection implies that the above-mentioned national treatment is not dependent on any formality.<sup>8</sup> While the third principle deals with the *independence of protection*, which signifies that enjoyment and exercise of the rights granted is independent of the existence of the protection in the country of origin of the work. In this sense, an American national may seek copyright protection in Bangladesh, if that protection is given in Bangladesh. It is immaterial to consider whether the protection is given in America or not.

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (*hereafter 'the TRIPS Agreement'*), one of the influential legal instruments in the field of IPR, recognizes copyright provisions laid down by the Berne Convention<sup>9</sup> and provides some Berne-plus provisions relating to copyright protection. Such provisions include, for example, *the protection of the form of expression* that denotes copyright protection to be extended to expression and not the ideas, procedures, methods of operation or mathematical concepts as such;<sup>10</sup> *the protection of computer-programs* which signifies computer programs whether in source or object code to be protected as literary works under the Berne Convention.

Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such.<sup>11</sup> As to the exception of copyright protection, according to the TRIPS Agreement members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.<sup>12</sup>

### ***Copyright Law: Bangladesh Regime***

The Copyright Act, 2000 (as amended in 2005) and the Copyright Rules, 2006 are the basic copyright laws in Bangladesh, by which protection has been offered to all works which contain original literary, dramatic, musical or artistic contents. The term of protection for such work is a period of sixty (60) years to be

<sup>8</sup> Article 5(2) of the Berne Convention.

<sup>9</sup> The TRIPS Agreement, Part II, Section I, Article 9 provides, "Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom".

<sup>10</sup> Article 9(2) of the TRIPS Agreement.

<sup>11</sup> Article 10 of the TRIPS Agreement.

<sup>12</sup> Article 13 of the TRIPS Agreement.

calculated from the calendar the year following the death of the author.<sup>13</sup> Copyright protection has also been provided to films, recordings and broadcasts. The Act states that the copyright owner enjoys exclusive rights of controlling (i) reproduction in any material form, (ii) communication to the public, (iii) performance, exhibition or playing to the public, (iv) the distribution of copies to the public by sale, (v) transfer of ownership, (vi) commercial rental to the public.<sup>14</sup> These exclusive rights imply the broad scope of copyright protection under the Act.<sup>15</sup> Copyright is limited to original literary, dramatic, musical and artistic works and relates to the expression of thought, but the expression need not be original or novel.

### **Copyright Compliance Scenario in the Music Industry of Bangladesh**

The copyright scenario in the Bangladeshi music industry is beset with problems. Some of these are as follows:

- 1) music piracy,
- 2) inadequate royalty for artistes, lyricists and composers,
- 3) inherent flaws within predominant copyright laws,
- 4) absence of strong implementation mechanism, and
- 5) lack of awareness among people

#### ***Music Piracy***

Piracy is the illegitimate use of copyright materials.<sup>16</sup> The unauthorized copying or reproduction of copyright materials for commercial purposes and the unauthorized commercial dealing in copied materials is treated as copyright piracy. It affects all of the elements involved in the creation, production and distribution of intellectual works.<sup>17</sup>

In the music industry of Bangladesh, piracy is a common phenomenon as its rate is around 96%.<sup>18</sup> According to an online report published by *Havocscope Black Markets* - an online database of black market activities, the music piracy market

<sup>13</sup> Sections 24-32 of the Copyright Act, 2000.

<sup>14</sup> Sections 24-32 of the Copyright Act, 2000

<sup>15</sup> Sections 14-15 of the Copyright Act, 2000.

<sup>16</sup> Lynette Owen, *Piracy Association of Learned and Professional Society Publishers* (2001) 67.

<sup>17</sup> World Intellectual Property Organization, Background Reading Material on Intellectual Property, (WIPO Publication No. 659(E), (1998) 288.

<sup>18</sup> Bangladesh Copyright and IP Forum, 'Pirate Attack', accessed 29 October 2016, [www.bcipf.org/doc/Article\\_Piracy%20Attack.pdf](http://www.bcipf.org/doc/Article_Piracy%20Attack.pdf).

value in Bangladesh stands at US\$ 180 million which is 11 times higher than our neighboring country India. Only 5 to 10 percent of the total music market consists of legitimate sales.<sup>19</sup> In Asia, street piracy is the major problem and Bangladesh has the highest piracy rate.<sup>20</sup>

In Bangladesh artists, musicians, composers- music industry on the whole- are being victimized by this unfair practice by vested groups. A song that becomes hugely popular does not necessarily enjoy legitimate record sales. Consequently, the production houses face severe economic loss.<sup>21</sup> Although the production houses generates jobs for about 2 lakh people and invests about Tk. 400 crore, many shops are finding it hard to survive due to large-scale unauthorized copying.<sup>22</sup> Further a few years back, there used to be almost 1,000 audio/ video albums released each year but now, due to piracy in media, this has come down to a measly 100 to 200 albums. Moreover, ten years back, Bangla albums comprised 90% of all sales as opposed to Hindi albums which only accounted for 10%. But now, this ratio has been reduced to 30 percent for Bangla album sales against 70 percent Hindi albums.<sup>23</sup>

Pirated copies of music have become so easily accessible that consumers don't feel encouraged to go for the genuine products. As a result, investors and creative individuals face huge loss.<sup>24</sup> The manner through which music piracy occurs can be categorized as follows:

- i) Pirated CD/VCD/DVD that replicate the musical works without permission of or payment to the author,
- ii) Music downloads from unauthorized websites for free, and
- iii) Unauthorized use of music by FM radio and in mobile phone operators.

<sup>19</sup> Havocscope, 'Losses to Bangladesh Music', accessed 29 October 2016, <http://www.havocscope.com/losses-to-bangladesh-music-industry/>.

<sup>20</sup> Fortium Digital Media Society, 'Pirated CD/DVD selling openly in Bangladesh', accessed 14 October 2016, <http://www.fortiumtech.com/article.aspx?id=519/>.

<sup>21</sup> Zahid Akbar, 'Piracy Pillaging Music Industry', *The Daily Star*, 4 August 2010, accessed 29 October 2016, <http://www.thedailystar.net/news-detail-149258/>.

<sup>22</sup> Information is given by Selim Khan, managing director of Sangeeta Ltd, a top music production house in Bangladesh. See Jasim Uddin Khan, 'Govt. to Combat Music Piracy', *The Daily Star*, 28 October 2010, accessed 27 June 2016, <http://archive.thedailystar.net/newDesign/news-details.php?nid=160255>.

<sup>23</sup> Said by the President of MIB, Nazmul Haque Bhuiyan, also owner of record label G-Series. See *The Independent's Weekend Magazine*, 1 June 2012, accessed 27 June 2016, <http://www.theindependentdigital.com/index.php?opt=view&page=39&date=2012-06-01/>.

<sup>24</sup> Akbar, above n. 18.

#### a) Pirated CD, VCD, DVD

Piracy is often encouraged at musical stores by vendors in the absence of strict laws and their implementation. Often it is impossible for an average consumer to differentiate between the original and its pirated copy. Almost five million blank CD-R and DVDs are imported every month to Bangladesh, mostly from China, Thailand and Singapore. Even owners of some leading music companies are behind this import. It is alleged that a major portion of these imported materials go into hands of pirates.<sup>25</sup> Most of the retail stores in Bangladesh, selling audio or video products have computers in their outlets, through which they make fake copies of music, drama and movie albums for only Tk. 20 to 35.<sup>26</sup>

#### b) Internet Downloads

The internet is also a major source of music piracy. Users can now download songs for free from the Internet. This has led to a drastic drop in sales of albums in Bangladesh. Likewise the international music sales dropped by a collective 10% in 2009 and global sales of the entire industry dropped from \$17.5 billion in 2008 to \$15.8 billion in 2009.<sup>27</sup> There are a number of unauthorized websites on which songs of Bangladeshi music-actors are frequently uploaded without any sort of payment towards their authors. Internet users can easily download them for free.

#### c) Unauthorized Use by FM Radio and Mobile Phone Operators

Major mobile phone companies routinely steal hit songs to use as ringtones or well come tunes without paying royalties to the author and make a huge profit in the name of 'value added service'. Moreover, cell phone companies do not quite conduct the appropriate due diligence while using contents or creative works before selling them. A cell phone company's weak internal legal compliance system is largely responsible for this.

#### Inadequate Royalty for the Artists

Media houses hardly observe the copyright law. Record labels and the individual artists and creative lots are not even aware of their rights and obligations. Artists

<sup>25</sup> *The Weekly Blitz*, 3 January 2012.

<sup>26</sup> Star Business Report, 'Int'l agency warns audio piracy on increase in Bangladesh', *The Daily Star*, 5 March 2008, accessed 29 October 2016, <http://www.thedailystar.net/news-detail-26245/>.

<sup>27</sup> Shams Bin Quader, 'Music Copyright in Bangladesh: A Way Forward', *INTELLECT* 1 (2012) 15.

give away their rights without realizing how best they can exploit them.<sup>28</sup> The royalty system has not been developed to the desired extent in the Bangladeshi music industry. Artists are still paid lump sum by the publishers of their music.<sup>29</sup> In government-owned television and radio station, artists and composers are paid a lump sum while the lyricists are paid a lower royalty each time the song is played or showed.<sup>30</sup>

Though user agreement plays very pivotal role in protecting interest of the each contracting parties, the concept of such agreement is not very popular in our music industry. Publishers own the copyright of music for a particular period and a specified number of copies agreed upon by the music creators. After the expiry of the time stated in the User Agreement, the copyright can newly be assigned by the music creators for a further period or a further number of copies. But in practice, publishers of Bangladesh music enjoy the copyright for unlimited time.<sup>31</sup>

The seller is not aware of a legal User Agreement with the singer, performer, tune setter or lyric writer. Similarly, law enforcing authority seem to be equally unaware, if not indifferent, about such violation of intellectual and creative rights. At times, popular and celebrated artists enter into a User Agreement but this agreement is violated over and over again by sellers at different corners of the country. Young artists are often seen to pay sizeable amount to the producers for publishing their cassettes/CDs and they are also deprived of their legitimate investment- not to mention the royalty they are entitled to. Artists also allege that one of the major reasons of piracy is that there is never any official count of album sales and neither is there any audits done on sales figures which are why the royalty system never became successful.<sup>32</sup>

<sup>28</sup> In a round-table discussion arranged by the Daily Prothom Alo, Prince Mahmud, a famous music composer and Lucky Akhond, a renowned singer of Bangladesh alleged that since they were busy with composing and singing they could not manage enough time to deal with copyright issues. See *The Daily Prothom Alo*, 28 August 2008.

<sup>29</sup> Dr. Mohammad Towhidul Islam, 'Royalties for Music', *The Daily Star*, 28 April 2015, accessed 29 October 2016, <http://www.thedailystar.net/law-our-rights/royalties-music-79417>.

<sup>30</sup> In a round-table discussion, Mohammad Rafiquzzaman, a leading lyricist of Bangladesh said that Government owned radio paid singers a small lump sum amount while lyricists got nothing. See *The Daily Prothom Alo*, 28 August 2008.

<sup>31</sup> Quader, above n. 24, at p. 17.

<sup>32</sup> Faizul Khan Tanim, 'Piracy in Media and the Bangladesh Scenario', *The Independent's Weekend Magazine*, 1 June 2012.

## ***Flaws in the Copyright Laws***

### **Ambiguous Definition of Musical Works in the Copyright Act 2000**

Section 3(a) of the Copyright Act 2000 mentions 'musical works' as one of the items to be protected along with 'dramatic works, dramatic music, film or musical works'. It is felt that the emphasis laid here is not fully unambiguous. Musical works have not been mentioned here as an independent entity, rather as a part of drama or a substitute of film etc. The situation is slightly improved in the Copyright Rules 2006, formulated and enacted under Copyright Act 2000. In Rules 3 (a) 'musical works' are identified as a separate genre, not together with drama and film works. So the very first hindrance towards the enforcement of copyright law of musical works in Bangladesh is in-built in the drafting of the concerned law.

### **Backdated Law to Accommodate the Digital World**

The life of the present generation has migrated online and a wide range of opportunities to violate copyright laws remain therein. But still now the music related laws of Bangladesh are very much backdated and can hardly accommodate this vast and growingly important digital world. There is no specific provision in the existing copyright laws that particularly addresses piracy in digital world.

### **No Protection to Folk Music**

Music in Bangladesh, like most countries of the world, is broadly divided into two sectors: traditional folk music and urban modern music. Some of our popular traditional musical expressions like *Baul*, *Bhatiali*, *Bhawaiya*, *Mazar*, *Gambhira*, *Royani*, *Hawla*, *Maizbhandari songs* etc, have an extra-ordinary unique identity of their own. Though modern music can be protected by copyright under existing law such protection cannot be afforded to folk music.

The Copyright Act, 2000 confers exclusive proprietary right to an individual. Idea of copyright as it exists in our law doesn't suit folk music since no individual but a particular community as a whole holds the proprietary right to

<sup>33</sup> See *Circular 1 on Copyright Basics*, United States Copyright Office, accessed 5 October 2016, <http://www.copyright.gov/circs/circ01.pdf>.

<sup>34</sup> According to principle of automatic protection laid down in the Berne Convention, copyright protection is not dependent on any formality.



this kind of traditional cultural expressions (TCE)<sup>35</sup> that should be protected by separate law.<sup>36</sup>

Since more than eighty percent<sup>37</sup> of our people live in rural areas and they are clustered into local or indigenous communities on the vast stretch of plains and surrounding hills of Bangladesh, we cannot ignore their moral, ethical and utilitarian rights in connection with their musical expressions. In the absence of traditional cultural expression (TCE) law, our folk music will remain unprotected.<sup>38</sup>

### ***Absence of Strong Implementation Mechanism***

#### **No Copyright Society and IPR-watch Agency in the Music Industry**

Both the Copyright Act, 2000 and Copyright Rules 2006 clearly include provisions for forming Copyright Societies relating to all genres individually.<sup>39</sup> These may also be called 'collective management societies'. No such society has

<sup>35</sup> Traditional cultural expressions (TCEs), also called "expressions of folklore", and includes music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives, or many other artistic or cultural expressions.

<sup>36</sup> TCE cannot be protected by existing copyright law for a number of reasons inter alia: a prerequisite for copyright is that a work must be original. Yet many folk artists made new music on the basis of pre-existing songs, which have been handed down for generations. Again, for copyright to vest under the Copyright Act, there must be an identifiable author. Yet because of the nature of cultural expressions, such a person is not easily identified and, therefore, cannot be protected. These requirements of authorship and ownership under the copyright system are thus incompatible with group or collective ownership. To obtain copyright protection, the work must be recorded or written in a permanent or tangible form; non-permanent forms of cultural expression do not meet the requirement. Since folklore exists practically in collective and individual memories, it does not have any material form. Copyright protects the form and not the substance, so traditional themes and artistic styles and techniques may not get protection. Moreover, duration of protection under the copyright system is grossly inadequate for TCE. See Kamal Puri, 'Protection of Traditional Culture and Folklore', Smithsonian Center for Folklife and Cultural Heritage, accessed 29 October 2016, <http://www.folklife.si.edu/resources/unesco/puri.htm>.

<sup>37</sup> Sarwar Md. Saifullah Khaled, 'Poverty in Bangladesh: Its causes and consequences', The News Today, accessed on 29 October 2016, [http://newstoday.com.bd/index.php?option=details&news\\_id=2389268&date=2014-09-13](http://newstoday.com.bd/index.php?option=details&news_id=2389268&date=2014-09-13).

<sup>38</sup> Dr. Mohammad Towhidul Islam, 'TRIPS Agreement and Bangladesh', The Daily Star, 2 February 2016, accessed 29 October 2016, <http://www.thedailystar.net/law-our-rights/trips-agreement-and-bangladesh-210949>.

<sup>39</sup> Chapter VIII, Sections 41 to 47 of the Act of 2000 provides for copyright society.

come into force as of now in Bangladesh resulting in a vacuum for a competent bargaining agency for copyright of musical works.

There is no IPR-Watch agency<sup>40</sup> as well. In its absence, commercial producers and sellers are running without check-and-balance and they are making random copies of cassettes, CDs of popular music and songs from home and abroad. A visit to any big or small or street shop selling such items in Dhaka would expose ready proof of illegal copying.

### **Insufficient Campaign or Program for Awareness and Training by the Government Agencies**

Concerted and enduring campaign, educational programs and action plan are hardly taken by the Copyright Office or any other appropriate government agency to popularize the idea of copyright and intellectual property right among our authors, cultural creators, stakeholders and others concerned. The annual report of 2014-15 of the Copyright Office claims to have undertaken some awareness program but there are no sufficient data as to where they were implemented.<sup>41</sup>

### ***Lack of Public Awareness***

Lack of awareness about the existing copyright laws can be treated to be the predominant reason for the ever increasing piracy in the music industry of Bangladesh. Users of intellectual property or any creative works, hardly pay any heed to observe the copyright law. Artistes, composers and musicians are unaware of their copyright as well. Most of the people do not realize that the copyright of a work belongs to the creators; not to them; if they copy it without authorization, it constitutes an infringement or an offense. Copyright can never be enforced at a desirable level until and unless all parties i.e. creator, publisher, and listeners become aware of the legal and social impact of infringement.

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<sup>40</sup> This type of agency can be constituted to make reports on the interests and behind-the-scenes dynamics that influence the design and implementation of international intellectual property policies in domestic level. Such agency can also be entrusted to monitor the copyright compliance in domestic market.

<sup>41</sup> Copyright Office, Bangladesh, *Annual Report 2015*, accessed 29 October 2016.

## Strategies to Improve Copyright Enforcement

### *Thwart Music Piracy*

The Copyright Act, 2000 provides the definition of infringement of copyright with civil and criminal punishment for such offence. As per section 71 of the Act, infringement involves one or more of the following acts without the authorization of copyright owner: a) reproduction of the work in any material form; b) publication of the work; c) communication of the work to the public; d) performance of the work in public and e) making of adaptations and translations of the work and doing any of the above acts in relation to a substantial part of the work.

In Bangladesh, in compliance with the provisions of TRIPS Agreement, there are three kinds of remedies civil, criminal and administrative against infringement and piracy of copyright. Under civil remedies, the owner of the copyright can bring civil action in which remedies such as Anton Pillar Order<sup>42</sup> or (Search Order) injunction, accounts and damages can be sought.<sup>43</sup> A suit or other civil proceedings relating to infringement of copyright is to be filed in the Court of District Judge.<sup>44</sup> As to criminal remedies, the Act in sections 82-84 declares certain acts as offences<sup>45</sup> and provides criminal penalties of imprisonment of the accused that may be extended to ten years or imposition of fine that may extend to Tk. 4,00,000 or both, including seizure of infringing copies etc.<sup>46</sup> Administrative remedies consist of moving the Registrar of copyrights to ban the import of infringing copies into Bangladesh.

As a result, the Copyright Act, 2000 and Copyright Rules, 2006 can be said to be adequate enough to curb down the piracy if implemented effectively. But the desirable implementation is absent.

<sup>42</sup> 'Anton Pillar Order' is in nature of interlocutory remedy which would allow a victim of copyright infringements to enter the premises of the infringer and seize the infringed articles including instruments of infringement. This remedy was first given to a British case- Anton Piller v. Manufacturing Process. Anton Pillar Order is very essential to prove the infringement. As a result the copyright office, in collaboration with custom authorities can inspect any vehicle, ship, air-craft, dock or premises on the basis or a complaint lodged by the owner of a copyright or his duly authorized agent and can take action to prevent importation of illegal copies.

<sup>43</sup> Section 76 of the Act of 2000.

<sup>44</sup> Section 81 of the Act of 2000.

<sup>45</sup> They are: i. willful infringing or abetting the infringement of the copyright in a work other than in the case of cinematograph film; or ii. willful infringing or abetting the infringement of the copyright in a cinematograph film; or iii. infringing 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 in computer.

<sup>46</sup> Sections 82-83 of the Act of 2000.

### Curbing Production of Pirated CDs

To stop piracy in the music industry, the Government may take the following steps:

- a) Establish an anti-piracy taskforce and take actions against rampant CD, DVD, CD-R, DVD-R and CD-ROM piracy.<sup>47</sup>
- b) Establish a cell within the Bangladesh Customs to intercept imports and exports.
- c) Inspect all optical disc plants and close down plants engaged in piracy, seizing pirated discs and materials, and prosecuting owners and managers of pirate plants.

*Foreign model:* An exemplary model from UK is mentionable here. In August 2005, a married couple was arrested for music, film and game piracy in *Operation Zouk*, a nationwide scheme headed by the Department for Work and Pensions. They were finally handed jail terms of between 6 months and 21 months at Liverpool Crown Court. They were convicted of copyright offences and benefit fraud. When their home in Formby was raided, £28,000 worth of pirated discs were discovered. During the entire operation nationwide, 57 arrests were made and £500,000 worth of counterfeit discs was seized.<sup>48</sup>

India has some notable instances where the court granted injunction against copyright infringement. The City Civil Court, Hyderabad in an order dated 22 June, 2012 granted interim protection against the copyright violation of the song *Aa Ante Amalapuram* from the Bollywood movie 'Maximum' in a suit filed by Aditya Music against Vainteya Films, Super Cassettes and Kabeer Kaushik. The Plaintiffs have filed a suit<sup>49</sup> for protection of copyright wherein the Plaintiffs have stated the song in the movie "Maximum" has been lifted from Telugu movie *Arya*, whose copyright is possessed by the Plaintiffs.<sup>50</sup>

The courts in India also provides copyright protection to foreign materials. *Rock 'n Roll Case* is a good example in this regard. In this case, Bangladeshi music band 'Miles' accused Indian music director Anu Malik of committing piracy of one of its original composition titled '*Phiriyedaoamarprem*'. In a writ petition filed in the Calcutta High Court on 17 March, 2004 the Judges passed an interim

<sup>47</sup> A taskforce has already been formed that operated a number of raid and confiscated huge pirated materials.

<sup>48</sup> BBC News, 'Jail Sentence for Piracy Couple', 4 August 2005, accessed 27 June 2016, <http://news.bbc.co.uk/2/hi/technology/4745041.stm>.

<sup>49</sup> M/s. Aditya Music (India) Pvt. Ltd. v. Vainteya Films & Others.

<sup>50</sup> Bar & Bench, 'Court stays release of 'Aa Ante Amalapuram' in the movie: Maximum', 26 June 2012, accessed 27 June 2016, <http://barandbench.com/content/trilegal-secures: interim-protection-aditya-music-against-copyright-violation-song-aa-ante#.UgN-QKwuf4s/>.

order where the respondent was ordered to remove the song from the sound track of movie 'Murder' and stop manufacturing, selling, distributing or marketing any music cassette or disc containing the song.<sup>51</sup>

### **Stopping Web-based Piracy**

The Government can take the following actions to control piracy:

- a) Block the websites that provide such copyright materials
- b) Warn the subscribers of the illegal websites and take action who will not stop browsing such sites.
- c) Pursue the web-owner and bring him to book.

*Foreign Model:* In this regard, some experiences from USA and UK are worth discussing. The USA has introduced a service named 'Copyright Alert' through which artists, moviemakers and other owners of content join public peer-2-peer (P2P) networks to see if the music, movies, and TV shows they've made available are being shared without permission and in violation of US copyright law. If they notice that a file is being shared illegally, they notify the appropriate Internet Service Provider (ISP) and that ISP, in turn, passes on that notice to their subscriber as a Copyright Alert. Subscribers are responsible for making sure their internet account is not used for copyright infringement. Copyright Alerts assist in this process by making account holders aware that unlawful content sharing may have happened using their internet account; educating account holders on how they can prevent copyright infringement from happening again and providing consumers information about ways to access digital content legally.<sup>52</sup>

After receiving one alert, most consumers are expected to take the appropriate steps to avoid additional alerts. However, if copyright infringement continues on a subscriber's account, ISPs can take steps that temporarily affect that subscriber's internet experience. Depending on the service provider, the ISP's range of actions may include: a temporary reduction in internet speed; a temporary downgrade in internet service tier or redirection to a landing page for a set period of time, until a subscriber contacts the ISP or until the subscriber completes an online copyright education program.<sup>53</sup>

The USA often prosecutes copyright infringers. In 2003, for distributing songs on the internet before they were released in shops, a man named Mark Shumaker (21)

<sup>51</sup> AbulKalam Azad, 'Rock 'n Roll in Bangladesh: Protecting Intellectual Property Rights in Music', Official Website of WTO, accessed 27 June 2016, [http://www.wto.org/english/res\\_e/booksp\\_e/casestudies\\_e/case3\\_e.htm/](http://www.wto.org/english/res_e/booksp_e/casestudies_e/case3_e.htm/).

<sup>52</sup> Center for Copyright Information, USA, 'What is Copyright Alert?', accessed 27 June 2016, <http://www.copyrightinformation.org/the-copyright-alert-system/what-is-a-copyright-alert/>.

<sup>53</sup> Ibid.

was sentenced up to five years in prison and ordered to pay a fine of \$250,000 (£158,590). The man had obtained pre-release copies of the CDs from music industry workers including DJs and magazine employees and then released the music in the internet.<sup>54</sup>

Further in the UK, a 38-year-old Briton who made £35,000 a month through a website (surfthechannel.com) that linked to pirated copies of films and TV shows and music was sentenced to four years in prison in 2012.<sup>55</sup>

### ***Ensure Adequate Incentives***

#### **Make User Agreement a Must**

The copyright issue is quite complex in musical works specially in determining the copyright owner since many actors play roles behind musical work. A music track is made up of a number of copyright elements: the music (also known as the 'musical composition'); the lyrics; and the sound recording of the performance of the musical composition and the lyrics. The music and lyrics are often referred to as the 'music publishing' rights. The sound recording is often referred to as the 'recording' right. Each separate element of a track is protected by copyright.<sup>56</sup>

The first person to create content is usually the first owner of the copyright. Where there is more than one creator, copyright may be owned jointly. Copyright can also be assigned to someone else. As to sound recording the first owner of a sound recording is the person who undertakes the necessary arrangements for the making of the recording. This is usually the producer. The rights in the sound recording are usually assigned by the producer to a record company. The record company may be the first owner of copyright in those sound recordings if the record company is the producer. As to music and lyrics the first owners of copyright in the music and lyrics will be the composer who composed the music and the person who wrote the lyrics. Publishing rights are often assigned to a music publisher, whose job is to exploit the rights in the musical compositions. Artists have a right to control the exploitation of their performances. However, artists usually assign any rights they have in their performances to a record label.

<sup>54</sup> BBC News, 'Convicted music pirate faces jail', 22 August 2003, accessed 27 June 2016, <http://news.bbc.co.uk/2/hi/entertainment/3172859.stm/>.

<sup>55</sup> Josh Halliday, 'Surf the channel owner sentenced to four years over piracy', The Guardian, 14 August 2012, accessed 27 June 2016, <http://www.theguardian.com/technology/2012/aug/14/anton-vickerman-surfthechannel-sentenced/>.

<sup>56</sup> Tune Teams, 'Recording Rights & Publishing Rights: A Simple Explanation', 21 February 2015, accessed 29 October 2016, <https://tuneteams.com/blog/recording-rights-publishing-rights-a-simple-explanation/>.

As to music videos a producer and a director own the first copyright in a music video. Generally, record companies take an assignment or 'buy out' of all additional rights in a music video.

The amount of royalty, duration of the royalty payable, proportion of each actor in royalty, terms and conditions for use of the music etc would be determined by user agreement with sufficient elaboration. In absence of a sufficiently clear user agreement, party can be deprived of his economic or moral rights.

### **Ensure Royalty from FM Radio and Mobile Phone Operators**

As mentioned earlier, mobile phone operators and FM radio of Bangladesh are frequently exploiting the musical works without any authorization. Such commercial exploitation is a gross infringement of copyright that should be immediately addressed. Further in many DJ parties and in shopping malls, music of famous authors are played without their permission.<sup>57</sup> This is also a commercial exploitation that needs to be addressed.

*Foreign model:* The experience of the USA can be applied in this regard where such kind of commercial exploitation of musical works is considered to be a 'public performance' and hence, a special license from the copyright owner must be obtained. In 2011, more than 50 small restaurants, pubs and bars were sued by the US royalty collector's agency BMI for playing live music without a license.<sup>58</sup> Many more received friendly visits from BMI lawyers urging them to pay their copyright dues. BMI is a collective rights organization (CRO). A CRO collects royalties and then distributes them back to copyright owners. This is conventionally thought of as the most effective way to collect royalties. Royalties are an enormously important source of revenue for copyright owners. When an artist gets a song played on the radio, royalties are collected and paid out. But in recent years, BMI and ASCAP (another CRO) have increasingly turned to a more obscure way to collect royalties - the public performance license.

The license is exactly what it sounds like - a license grants the right to perform the copyrighted work of another to the public. Most people would think this only applies to live music venues with lots of different bands playing each week. But, BMI and ASCAP are now actively applying this license to small, local, neighborhood

<sup>57</sup> Mizanur Khan, 'Piracy in audio-video markets threatens genuine traders', The Daily Star, 3 April 2005, accessed 29 October 2016, <http://archive.thedailystar.net/2005/04/03/d504032501115.htm/>.

<sup>58</sup> Torrent Freak, 'Music Copyright Police Ruin Artists', 8 October 2011, accessed 27 June 2016, <http://torrentfreak.com/music-copyright-police-ruin-artists-gigs-and-coconut-curry-111008/>.

businesses that decide to have a little live music for the benefit of their customers. This is completely within BMI and ASCAP's legal rights.<sup>59</sup>

### **Introduce Online Payment System for Online Music Store**

It has become very difficult to enforce copyright law in a world where file-sharing has become a common phenomenon. So, there should be introduction of something that could be the response to the copyright infringement. One business model that has successfully emerged is online music stores like the i-tunes store. Digital music downloads now make up a third of the recorded music sales in the US. The i-tunes store sold their 10 billionth songs back in February 2010 which indicates that users are still willing to pay for music.<sup>60</sup>

In the case of Bangladesh, this kind of business model is not readily possible, since payments have to be made online, most commonly through credit cards. But how many people in Bangladesh own credit cards and do the local laws allow online payments? It is very difficult and expensive to maintain an international credit card with which songs can be bought legally through the i-tunes store. There are some Bangladeshi websites that allow customers to download music that shares revenues with the record labels and the artists, subject to the terms of their agreement, but these websites lack online payment facilities.

However, to improve the situation in Bangladesh, online payment system or transferring money via mobile phones can be introduced. Fairly recently the popular band Miles released five songs from their new album, available solely to Grameenphone users. The songs had to be bought and downloaded directly to the mobile phones of Grameenphone users. This model, if properly utilized in Bangladesh would be a win-win situation for all.

### ***Reform the Copyright Law***

As pointed out earlier, the copyright laws of Bangladesh suffer from shortcomings. To overcome, the following recommendations may be considered:

- a) 'Musical works' should be defined and addressed with more clear and distinct attention.
- b) A provision should be added to afford protection to folk songs.
- c) Formalities like registration for copyright enforcement should be omitted.<sup>61</sup>

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<sup>59</sup> Ibid.

<sup>60</sup> Quader, above n. 24, at p. 16.

<sup>61</sup> According to principle of automatic protection laid down in the Berne Convention, copyright protection is not dependent on any formality.



- d) Digital piracy especially that occurs on the internet should be sufficiently addressed with clear wording.

### **Conclusion**

The government's responsibility does not end with the enactment of a particular legislation. It should also take adequate steps to create awareness among the relevant stakeholders (media workers, entrepreneurs, business/corporate entities, education institutions, students and youths) of a particular law and build capacity among the appropriate branch of administrative and law enforcement agencies. Further the judiciary must be trained and made capable of handling IPR related cases. Since Bangladesh already has specialist family courts and company courts, IP Courts may also be set up. Enforcement of existing copyright laws should be prioritized.

Further, both the Copyright Act, 2000 and Copyright Rules, 2006 clearly include provisions for forming Copyright Societies in all genres. These may also be called collective management societies. No such formal society has come into force as of now in Bangladesh. This results in a vacuum of a competent bargaining agency for copyright of musical works. Hence, the formation of such society is desirable to ensure the honorable survival of the artists involved in the music industry of Bangladesh. This society could offer services like the Broadcast Music Inc. in the USA. They exist to collect license fees from businesses that use music, which it distributes as royalties to songwriters, composers and music publishers.

The government also has to educate the listeners about piracy in a way that relates to their listening experience. The whole industry will have to put aside their differences and start a mass social movement. Due to a lack of copyright compliance, the music industry of Bangladesh has already suffered. If such lawlessness continues, the proud culture of our country will surely suffer. If we do not respect or recognize the value of creativity that are the brainchild of others, we will discourage creativity and creative works.

Since the law plays a very pivotal role in shaping the mindset and culture of compliances, the necessary modifications, additions and alterations should be made on an urgent basis. Once the laws are effective, it gets easier to enforce. The key to effective laws is the creation of an underlying public culture whose values support the voluntary compliance with legal rules.<sup>62</sup>

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<sup>62</sup> Tom R. Tyler, 'Compliance with Intellectual Property Laws: A Psychological Perspective', *New York University Journal of International Law and Politics* 29 (1997): 235.