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Using existing Copyright Act
for protection and
commercialization of TK and
TCEs of Bangladesh

Professor Mohammad Nurul Huda

Dean, Faculty of Human Sciences,

Darul Ihsan University, Dhaka.

1. Existing Legal Instruments of Intellectual Property in Bangladesh

Legal enactment of intellectual property in Bangladesh is quite old, although its study, education, training, research and enforcement are not regularly updated in Bangladesh. The country has inherited Intellectual Property system from the British regime. The first codified IPR system in the south Asian subcontinent was passed in 1856. It is called the Act VI of 1856 on the Protection of inventions, based on the British patent law of 1852. Over the years other legislations that addressed trademarks and designs were introduced and activated in Patent and Designs Act of 1911 and Trademarks Act 1940. These are updated now. A GI (Geographical Indicators) law has also been drafted very recently. Law for protection of traditional knowledge and traditional cultural expressions has also been drafted after an extensive survey of items identified with their individual and community-based creators/performers/stakeholders, aesthetic and economic valuation of each item, mode of their commercialization as cultural products in the backdrop of a fast developing cultural industry across the world and it was sent to WIPO, the sponsor of the study, for their comments, endorsement, publication and necessary follow-ups. Recently an Intellectual Property Project has been launched in Dhaka with direct assistance from WIPO. Registrar of Design, Patent and Trade Mark Directorate is working as its Project Director now. Ministry of Industries is looking after the offices of Patent and Designs and the Trademarks Registry Office whereas Copyright Office is under the Ministry of Cultural Affairs; On the other hand, Ministry of Commerce is looking after the activities related to the TRIPS agreements of

2. History of Copyright Act in Bangladesh

Bangladesh inherited the British Copyright Act 1911. In Pakistan it was amended in 1962. After Independence of Bangladesh, Copyright Act 1974 was passed. It was further amended in 1978. Finally Copyright Act 2000 was enacted in 2000. This was further amended in 2005. Bangladesh Copyright Rules were also introduced in 2006. Copyright office is administered by a Registrar under the Ministry of Cultural Affairs. An affected copyright owner can seek remedies both in the form of civil and criminal action against an infringement of copyrights. Copyrights in Bangladesh as per existing law generally gives the duration of author's life plus 60 years after his death. The law extends protection among others, to computer programs, rental rights of computer programs with adequate penal measures for infringement. In the Act there are provisions for forming copyright society and it allows them to do business.

Bangladesh adheres to all the international conventions regarding copyright, patent, design and trademark, but it is yet to develop its Competition Law to regulate unfair competition among traders and business community.

3. Main Domain of Copyright in Bangladesh

- The main domain of copyright is the protection of literary and artistic works. These include writings of all genres, music, films, broadcasting, works of the fine arts, such as paintings and sculptures and technology based works such as computer programs and electronic databases. Related rights (Performer's right) also resemble copyright. The purpose of related rights is to protect the legal interests of certain persons and legal entities who contribute towards making the works available to the public. One obvious example is the singer or musician who performs a composer's work to the public. Related rights are not copyright but these are closely associated with them; they are derived from a work protected by copyright. So they often go hand in hand. Related rights are also termed as 'Neighboring rights'. Bangladesh Copyright law has certain provisions to protect performer's rights that extend to a time-bound period not exceeding 60 years after the first performance has taken place.

4. Protection of TK and TCEs missing in existing IP including Copyright Act

- Existing Copyright Act (2000, amended in 2005) works as an effective and useful IP instrument to protect the rights and commercialization of the works, either tangible or intangible, by our writers, publishers, producers, film makers, musicians, performers, computer software and other forms of creators and their creations as mentioned in sections (2) and related ones. Joint authorship, group authorship, works by unknown or anonymous authors are also protected in this Act. But sections for protection of traditional knowledge and tangible or intangible expressions (TCEs or EoF, as we call today) mostly mothered by it (TK) are totally missing here. The related sections which are to be included should deal with indigenous, localized and specialized communities, individual folk-creator followed by a community of his own (for example Lalon Community in Kushtia, Maizbhandari in Chittagong) and the identified right holders of their TK-TCEs along with duration of such rights. Existing copyright gives protection to creators for their lifetime plus 60 years after their death, which does not apply to communities and their knowledge-based creation growing out of their prior knowledge for generations together as their sacred possessions. Moreover the concept of positive (for commercially viable expressions), defensive (for sacred and ritualistic expressions) and incentive (for extinct and endangered expressions) protection was not articulated by the law makers for some reason or other, which is why it has no place in this legal document.

5. Commercial Viability of TK and TCEs in Bangladesh

- It is interesting to note that from commercial point of view a good number of TCEs (more than 50) are commercially viable and a valuation study based on field survey in 2005-6 reveals that TCEs worth about two billion US dollar are transacted annually inside the country (Huda, 2006) on a most conservative estimate. Producers of these cultural goods are mostly indigenous communities and similar traditional groups or societies. This study also includes a list of identified communities, individuals, stakeholders etc along with recommendation for their protection and commercialization. At the end, a legal instrument for protection of TK and TCEs has been annexed as a draft. If this instrument does not come in force, we have to include provisions for such protection in existing copyright act. In our opinion, it can be done, if the duration of protection is agreed as time-bound. Local, regional, national and international consent and consensus are necessary for this purpose.



Summary of valuation of TCEs of Bangladesh 2007

Serial	Division	Area in km	Population in ‘000’		No. of existing TCE identified		
	Shadow pricing (in Taka ‘000’)						
		2005	Tentative (Conceptual pricing in Tk ‘000’)				
			2007	Comments			
1	Dhaka	31120.00	38987	44(46)	47234180	55364180	Export included
2	Chittagong		33771.31	24119	43(47)	20932175	32595575 -
3	Rajshahi		34514.00	30088	41(47)	21575620	24079200 -
	4 Sylhet	12596.00	7897	31(41)	5216925	7025625	-
	5 Barisal	13297.00	8153	40(44)	2524620	6749780	-
6	Khulna		22274.00	14604	38(45)	8742080	12239790 -
	7 Mymensing						
	(Treated as an independent folkloric zone for valuation)				(16672)	(15624)	37(52)
		13246450	20102800	Area and population calculated within Dhaka Division			
8	Indigenous Communities					1000000	1000000
(Projected and expected after capacity building at the community levels)							
		147572.31	123848		120472050	159156950	

6. Items of TK and TCEs to be protected

- (a) All identified items of Traditional Cultural Expressions (TCEs) or Expressions of Folklore (EoF), either tangible or intangible, have to be protected positively against the following acts in the main, provided such expressions are made either for commercial purposes or violation or distortion or mutilation of their traditional or customary context and identity:
 - (1) direct copying, imitating or reproducing;
 - (2) distorted or mutilated copying, imitating or reproducing;
 - (3) communicating to the people at large by any means of physical or digital performance including holding shows on stage or open air;
 - (4) Communicating by broadcasting, telecasting, mobile networking, distribution through cable networking or other means still unthought-of;
 - (5) recreating, adapting, translating or transforming in any other form or manner



Contd.

- (b) In case of tangible products (such as *Nakshikantha*) the technique, design (say Alom, a traditional design catalogue of Indigenous garments of hilly people in Chittagong Hill Tracts) and ingredients of the product have to be protected;
 - (c) In case of intangible expressions tune, word-association, rhetorical uniqueness, regional and contextual contents (music and song), formula, ingredients (indigenous medicine, craft), structure, narrative style, rhythm (verbal/oral literature), sanctity (rituals) etc are to be protected.
 - (d) Duration of rights on ethical and moral grounds must perpetuate in eternity as suggested in copyright act (section 78, author's special right);
 - (e) Duration of rights for individuals should be time-bound as mentioned in copyright act following Berne convention.
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contd.

- (f) Duration of rights for communities of any kind should apply to the lifetime of the community and a prescribed period after their extinction, if it so happens for some reason or other. However, the rights for post-extinction period may be fixed at 500 years in the minimum and such rights should vest in the state party who owned the origin community or communities.
- (h) For effective commercialization all formal and informal practices like PIC, User Agreement, Licensing etc may be followed.
- (i) For identification, preservation and revitalization of TK-TCEs, both physical and digital procedure should be followed. We propose a 'Community Museum' (CM) in each kind of community with a view to identifying, documenting, preserving and innovating all existing, endangered and extinct items without distortion and mutilation. This CM may also work as centre of entertainment and commercial activity for the community concerned.

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- (j) For effective realization of rights every community should name their IPR agency which may work as Copyright society as mentioned in Copyright law and rules in practice.
- (k) For effective coordination Cultural Authority may operate directly or indirectly through its IP body like copyright office etc.
- (l) Sections should be added in the relevant chapter for violation of rights of TK-TCES along with prescribed remedial measures as the court may deem fit



Duration of rights in Bangladesh Copyright Act (2000, amended in 2005)

- •Creator's rights (Author, Painter, Sculptor, Tunesetter etc) : Lifetime + 60 years after death
- •Film : 60 yrs after first release
- •Sound recording : 60 yrs after first recording
- •Photograph : 50 yrs after first published
- •Government works : 60 yrs after first published
- •Works by Local and International Organizations : 60 yrs after first published
- •Broadcast /(Telecast): 25 yrs after first broadcast/telecast
- •Performer's right (singer etc) : 50 yrs after first performed

Duration contd.

- Rights of edition of published works : 25 yrs after first published in a particular format developed by the first Publisher.
- Unknown Authors : 60 yrs after first published. If the name is disclosed before death of an author or any author (in case of joint authorship), duration of rights shall extend up to 60 yrs after his death.
- Translator's right : Lifetime + 60 yrs after his/their death
- Individual rights : Applies to an individual and his legal successor(s)
- Composite right in case of joint work : equal share if not otherwise agreed in written agreement
- Duration of an agreement : 5 years if not otherwise mentioned in written document

7. Exemptions

- The right proposed in the previous para (para 6) may not apply to the following acts
 - (a) fair dealing for private and domestic use, without commercial gain. If the use is public, acknowledgement of the title of the work and its source must be made; (b) purposes of education, research, journalism, judiciary and academic works with no monetary gain; (c) author's utilization of it by way of illustration in his original work; (d) author's adaptation of it for stimulation of creativity in his original work; (e) for any other customary or incidental utilization, for which the community has extended its consent through cultural authority. (f) However, in each case oral and written acknowledgement should be made to the origin community in appropriate manner depending on the nature of use.
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8. Concluding Remarks

- It is to be mentioned here that TCEs or EoF mostly refer to a group-oriented and tradition-based creation of collective groups or individuals. It reflects the expectation of the community as an acceptable expression of its socio-cultural identity, standards and values transferred from one generation to another through oral transmission, by imitation or by other means including verbal expressions (mostly literature), musical expressions (music, songs, instruments), expressions by action (dance, drama, fair etc) and tangible expressions (agricultural and fishing equipment, herbal medicines, crops, genetic resources, folk art including drawings, paintings, carvings, sculptures, clay works, pottery, terracotta, mosaic, woodwork, metalwork, handicrafts, costumes, *nakshikantha*, *Tangail sari*, indigenous textiles etc).

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Concluding (contd.)

- We are not oblivious of the fact that every traditional community and society should interact with others, if it so wishes, for its gradual growth and onward graduation into a self-sustaining, affluent and modern society aiming at contributing towards universal prosperity. Mankind as a whole is conceived as a singular entity in today's global village. The privileged and unprivileged societies of the world should strike an effective balance in their outlook and implementation of ideas and works in order to eliminate the gap between them. Protection and commercialization of TK-TCEs in the unprivileged societies may be an effective tool for this purpose. Members of privileged societies are expected to extend their helping hand with commitment and responsibility. This is how mankind shall prosper in reciprocity
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Summary

- A new chapter on Protection of TK and TCEs has to be included in existing Act.
- Proper determining of what is to be protected in an expression (tangible or intangible)
- Communities, groups, individuals obliged to communities, individual creators with large following etc have to be identified.
- Time-bound protection as per existing copyright provisions for all individual creators, performers, producers and others.
- Lifetime protection for living communities.
- Protection may expire after a given period (say 500 years) for an extinct community. National and international consensus needed on this issue.



Summary (contd.)

- Acknowledgement for all non-commercial use.
 - Moral, ethical and aesthetic rights must perpetuate for any expression and its creator, irrespective of individuals and communities.
 - Benefit sharing procedure should work through state parties.
 - Indigenous and unprivileged communities should be accorded all possible supports for their graduation into a self-sustaining and modern community.
 - Community Museums at all levels must be set up to preserve the memory of communities in particular, and humankind as a whole.
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Thank you all.

