

# Copyright Laws in Bangladesh

## Historical Evolution of Copyright Legislation

- **Colonial and Pre-Independence Framework:**
  - Bangladesh's copyright regime originated from the Indian Copyright Act of 1914 during British colonial rule
  - This colonial-era legislation primarily protected British interests rather than local creators
  - The Copyright Ordinance of 1962 was introduced during Pakistani governance, modifying but not fundamentally changing the colonial framework
  - Both laws predated digital technologies and focused mainly on traditional literary and artistic works
- **Post-Independence Development:**
  - Following independence in 1971, Bangladesh continued operating under the 1962 Ordinance for nearly three decades
  - The Copyright Act, 2000 marked Bangladesh's first independent copyright legislation, reflecting the country's sovereignty in intellectual property matters
  - The 2000 Act introduced provisions for computer programs and databases, though these were limited in scope
  - Significant amendments in 2005 strengthened enforcement mechanisms and expanded protection for digital works
  - The Copyright Bill 2023, passed by Parliament in September 2023, represents a comprehensive overhaul of the system to address digital era challenges

## Key Provisions of Copyright Act 2023

- **Expanded Protection Scope:**
  - Extends protection to all ICT-related products, activities, databases, and designs created by digital tools
  - Explicitly covers digital computer-based activities, addressing significant gaps in previous legislation
  - For the first time, recognizes copyright protection for folk music, songs, and cultural expressions
  - Includes dress designing, graphics, artistic images, and digital designs as protected art forms
  - Provides clearer definitions of "work" and "author" to encompass modern creative expressions
- **Enhanced Definitions and Classifications:**
  - Introduces specific legal definitions for anonymous/pseudonymous work owner, database, public domain, producer, and person
  - Clearly defines folk song, folk culture, and folklore for the first time in Bangladeshi legislation

- Categorizes different types of works with specific protection requirements for each
- Clarifies ownership rights for works created in employment or commission relationships
- **Folk Culture Protection:**
  - Dedicates an entire chapter (Chapter 7) to securing rights of folk knowledge and folk culture
  - Tasks the government with tracing the origin of cultural expressions to specific communities
  - Requires government permission and contracts with origin communities for commercial use
  - Mandates that a portion of income from commercialization be spent on cultural development of these communities
  - Creates first legal framework in Bangladesh for protecting traditional cultural expressions
- **Strengthened Penalties:**
  - Imposes a fine of Tk 500,000 (approximately US\$4,500) for publishing, serving, or performing others' work without permission
  - Sets a maximum punishment of five years imprisonment and Tk 1 million (approximately US\$9,000) fine for film copyright infringement
  - Introduces graduated penalties based on the nature and scale of infringement
  - Provides for enhanced penalties for repeated violations
- **Enforcement Mechanisms:**
  - Establishes a specialized Task Force on Enforcement of Intellectual Property Law
  - Creates procedures for addressing copyright violations on digital platforms
  - Grants expanded powers to the Copyright Office for investigation and enforcement
  - Introduces mechanisms for alternative dispute resolution in copyright cases
  - Allows for border measures to prevent import of infringing materials
- **International Compliance:**
  - Incorporates provisions in compliance with the Marrakesh Treaty, facilitating creation of accessible format works
  - Harmonizes Bangladeshi law with the country's obligations under the Berne Convention
  - Brings copyright protection standards in line with TRIPS Agreement requirements
  - Prepares Bangladesh's IP framework for the country's graduation from LDC status in 2026

## International Treaties and Agreements

- **Berne Convention (Accession 1999):**
  - Establishes automatic copyright protection without requiring registration
  - Ensures that Bangladeshi works receive protection in all other member countries
  - Applies principle of "national treatment" where foreign works receive the same protection as domestic works
  - Sets minimum protection standards Bangladesh must maintain in its copyright laws
- **TRIPS Agreement (WTO Membership 1995):**
  - Requires Bangladesh to provide minimum standards of IP protection

- Links intellectual property to international trade considerations
- Includes enforcement provisions and dispute resolution mechanisms
- As Bangladesh approaches LDC graduation in 2026, TRIPS compliance becomes increasingly important
- **Marrakesh Treaty (Ratification 2022):**
  - Facilitates access to published works for visually impaired and print-disabled persons
  - Allows creation of accessible format copies without copyright holder permission
  - Permits cross-border exchange of accessible format works
  - Balances copyright protection with access to knowledge for disabled persons
- **Implementation Challenges:**
  - Limited resources for full implementation of treaty obligations
  - Gaps between legal commitments and practical enforcement
  - Need for capacity building in government agencies and judiciary
  - Balancing international obligations with development priorities

## Fair Use in Copyright Law

- **Legal Evolution:**
  - Transition from restrictive "fair dealing" provisions in earlier legislation
  - Copyright Act 2000 provided specific Fair Dealing provisions under section 72
  - The Copyright Act 2023 introduces a more liberal approach aligning with international standards
  - New Act omits conventional lists of exceptions, creating a more flexible regime
- **Determining Factors:**
  - Purpose and character of use (commercial vs. non-commercial, transformative vs. reproductive)
  - Nature of the copyrighted work (factual works receive less protection than creative works)
  - Amount and substantiality of the portion used in relation to the whole
  - Effect of the use on the potential market or value of the original work
  - Courts apply these factors on a case-by-case basis rather than following rigid rules
- **Permitted Uses:**
  - Research and private study are explicitly protected
  - Criticism, review, and news reporting with proper attribution
  - Educational use in classroom settings and academic contexts
  - Parody and satire receive increasing recognition under fair use
  - Incidental inclusion of copyrighted material in other works
- **Educational Fair Use:**
  - Special provisions for educational institutions to reproduce limited portions of works
  - Distance learning and online education present new challenges for interpretation
  - COVID-19 pandemic highlighted importance of flexible fair use for remote education
  - Universities developing institutional policies to guide faculty and students

## Software Copyright and Digital Protection

- **Legal Framework:**
  - Computer programs protected as literary works under copyright law
  - Protection extends to both source code (human-readable) and object code (machine-executable)
  - User interfaces and visual elements may also receive protection
  - Copyright Act 2023 explicitly recognizes software, databases, and digital media as copyrightable
- **Registration Process:**
  - Registration not mandatory for protection but provides important legal advantages
  - Process requires submitting application forms, fees, software description
  - Deposit requirements include portions of source code and identifying materials
  - Registration provides presumption of validity in court proceedings
  - Copyright Office maintains confidentiality of deposited source code
- **Digital Content Protection:**
  - Covers websites, mobile applications, digital multimedia, and electronic publications
  - Social media content receives explicit protection under the 2023 Act
  - Using film scenes or sound recordings on digital platforms without permission violates copyright
  - Digital Rights Management (DRM) systems receive legal protection
  - Anti-circumvention provisions prohibit bypassing technological protection measures
- **Software Piracy Challenges:**
  - Bangladesh faces extremely high software piracy rates, estimated at 92% as of 2020
  - This represents significant economic losses, estimated at over \$325 million annually
  - The software industry market size is projected to reach \$2.2 billion by 2025 despite piracy challenges
  - Export dependency makes the industry particularly vulnerable to reputation damage
  - Limited enforcement resources and technical expertise hamper anti-piracy efforts

## Copyright Administration and Registration

- **Copyright Office Structure:**
  - Operates under the Ministry of Cultural Affairs
  - Led by a Registrar with expanded powers under the 2023 Act
  - Government will appoint additional copyright registrars to handle increased workload
  - Office maintains the copyright register and issues certificates of registration
  - Regional offices being established to improve accessibility
- **Key Functions:**
  - Issues copyright registration and certification
  - Handles licensing of translations and reproductions
  - Can stop import of illegal copies of intellectual products
  - Manages conservation of folk culture and traditional expressions

- Provides government advice on copyright matters
- Offers incentives and recognition to original artists
- Conducts awareness and education programs
- **Copyright Board Powers:**
  - Can retain, modify, or cancel orders of the registrar (new power under 2023 Act)
  - Adjudicates disputes regarding copyright registration
  - Sets royalty rates for statutory licenses
  - Hears appeals from Copyright Office decisions
  - Includes representatives with legal and creative industry expertise
- **Registration Benefits:**
  - Creates legal presumption of copyright ownership
  - Required for initiating infringement suits in many cases
  - Provides public notice of copyright claim
  - Establishes public record of copyright ownership
  - Enables eligibility for statutory damages in infringement cases

## Collective Management Organizations (CMOs)

- **Role and Function:**
  - Organizations that collectively manage rights on behalf of multiple copyright holders
  - Collect and distribute royalties for use of copyrighted works
  - Negotiate licenses for users of copyrighted material
  - Monitor use of works and enforce rights against infringement
  - Reduce transaction costs for both creators and users
- **Major CMOs in Bangladesh:**
  - Bangladesh Copyright Society (BCS) for literary works
  - Bangladesh Music Performers' Rights Association (BMPRA) for musicians
  - Bangladesh Authors' Association for writers
  - Bangladesh Filmmakers Association for film rights
- **Legal Framework:**
  - The Copyright Act 2023 provides explicit recognition and regulation of CMOs
  - Requires registration and oversight by the Copyright Office
  - Sets standards for transparency and accountability in royalty collection
  - Establishes dispute resolution mechanisms for royalty distribution
- **Challenges:**
  - Limited membership and awareness among creators
  - Difficulties in monitoring use in digital environment
  - Challenges in collecting from reluctant users
  - Need for improved governance and transparency
  - Competition between multiple CMOs in same sector

## Emerging Technologies and Copyright

- **Artificial Intelligence:**
  - Copyright Act 2023 attempts to address AI-related issues but leaves significant questions
  - Unclear status of works generated by AI without human intervention
  - Questions about copyright in training data used for AI systems
  - Potential for AI to both infringe copyright and help detect infringement
  - Need for further legal development as technology evolves
- **Blockchain and NFTs:**
  - Blockchain being explored for copyright registration and management
  - Non-fungible tokens (NFTs) raise questions about digital ownership vs. copyright
  - Potential for smart contracts to automate licensing and royalty payments
  - No explicit provisions in current law, leaving legal uncertainty
  - Bitcoin Association of Bangladesh advocating for clearer legal framework
- **User-Generated Content:**
  - Social media platforms host massive amounts of potentially infringing content
  - New act attempts to clarify liability of platforms vs. users
  - Introduces limited safe harbor provisions for platforms that remove infringing content
  - Questions remain about duties of platforms to monitor for infringement
  - Balance between creator rights and free expression online
- **3D Printing and Design Protection:**
  - Additive manufacturing raises new questions about design copyright
  - CAD files may be protected as artistic or literary works
  - Physical objects produced from digital designs raise complex issues
  - Growing technology adoption in Bangladesh increases urgency of clarification
  - Potential overlap with patent and design protection

## Creative Commons in Bangladesh

- **Adoption and Usage:**
  - Creative Commons licenses increasingly used by Bangladeshi creators since 2010
  - Provides standardized framework for sharing and reusing creative works
  - Six main license types offering different levels of permission
  - Growing popularity in academic publishing, photography, and software
  - Workshop series by Creative Commons Bangladesh increased awareness
- **Legal Status:**
  - Creative Commons licenses operate within existing copyright framework
  - Copyright Act 2023 recognizes validity of open licenses
  - Licenses have not been extensively tested in Bangladeshi courts
  - Function as contracts between creators and users
- **Educational Applications:**
  - Growing movement for Open Educational Resources (OER) using CC licenses
  - Several universities adopting CC-licensed materials to reduce textbook costs

- National digital content repository using CC licenses for educational content
- Reduces barriers to educational access while respecting copyright
- **Challenges:**
  - Limited understanding of different license types and obligations
  - Confusion about commercial vs. non-commercial use restrictions
  - Enforcement issues when license terms are violated
  - Need for greater awareness among creators and users

## Copyright and Traditional Knowledge

- **Folk Culture Protection:**
  - Copyright Act 2023 provisions on folk culture protection are groundbreaking in Bangladesh
  - Recognizes communal ownership of traditional cultural expressions
  - Establishes government role as custodian of folklore rights
  - Creates mechanism for benefit-sharing when traditional knowledge is commercialized
  - Responds to previous controversies over appropriation of folk songs and designs
- **Implementation Mechanisms:**
  - Copyright Office tasked with documenting and registering folklore
  - Government to establish community identification process
  - Revenue sharing system being developed
  - Advisory committee with community representatives to guide process
- **Challenges:**
  - Difficulty in identifying "original" communities for widely shared cultural expressions
  - Balancing protection with normal cultural transmission and evolution
  - Administrative capacity to document vast cultural heritage
  - Potential conflicts between individual adapters and communities
  - International protection limited by territorial nature of copyright
- **International Context:**
  - Bangladesh's approach aligns with WIPO discussions on traditional knowledge
  - More comprehensive than many developed nations' approaches
  - May serve as model for other developing countries
  - Need for international protection mechanisms remains

## Notable Copyright Cases

- **Miles vs. Bollywood (2004):**
  - Prominent Bangladeshi band Miles discovered their song "Phiriye Dao" had been copied in the 2004 Bollywood movie "Murder"
  - Filed writ petition in Calcutta High Court against producers, music director, singer, and recording firms
  - Case highlighted cross-border enforcement challenges
  - Underscored need for stronger regional copyright cooperation
  - Resulted in settlement and raised awareness about music copyright

- **Folk Song Dispute (2018-2022):**
  - Copyright dispute over the Mymensingh Geetika song "Sarabata Mangal Radhe"
  - Sherpur-based folk band Shorolpur claimed it as their original track after commercial coverage by Meher Afroz Shaon and Chanchal Chowdhury
  - Band had obtained copyright registration in 2018, but copyright office cancelled it in January 2022
  - Dispute highlighted challenges in determining ownership of traditional songs
  - Contributed to new folk culture provisions in 2023 Act
- **Software Copyright Enforcement:**
  - Microsoft Corporation vs. Computer Source Ltd. (2016)
  - First major software piracy case resulting in significant damages
  - Business ordered to pay compensation for using unlicensed software
  - Established precedent for software copyright enforcement
  - Led to increased compliance among business sector
- **Academic Publishing Case:**
  - Major international academic publishers filed suit against copy shops near university campuses
  - Alleged systematic reproduction of textbooks without permission
  - Resulted in injunctions against copy shops and raised awareness about academic publishing rights
  - Highlighted tension between educational access and publisher rights
  - Led to discussions about licensing solutions for educational use

## Cross-Border Enforcement

- **Regional Challenges:**
  - Bangladesh faces significant challenges in enforcing copyright across borders
  - Particularly problematic with neighboring countries like India where language and cultural similarities facilitate infringement
  - Digital piracy often involves international networks, complicating enforcement efforts
  - Jurisdictional issues arise when servers hosting infringing content are located abroad
  - Lack of harmonized procedures for cross-border enforcement
- **International Cooperation:**
  - Bilateral agreements with India and Pakistan on intellectual property enforcement
  - SAARC framework provides regional mechanisms for cooperation
  - WIPO assistance for capacity building in transnational enforcement
  - Interpol cooperation for major commercial piracy operations
  - Challenges remain in practical implementation of cooperation frameworks
- **Digital Enforcement:**
  - Online piracy presents particular cross-border challenges
  - Website blocking implemented for notorious piracy sites
  - Payment processing restrictions for known infringing services



- Notice and takedown procedures with international platforms
- Need for improved technical capacity in tracking online infringement
- **Success Stories:**
  - Joint operations with Indian authorities against physical piracy operations
  - Cooperation with international software companies on enforcement actions
  - Regional judicial conference established best practices for copyright cases
  - Extradition of major commercial pirates in significant cases

## Challenges and Future Directions

- **Enforcement Obstacles:**
  - Limited resources within enforcement agencies hamper effective implementation
  - Technical complexity of digital copyright cases presents specialized knowledge requirements
  - Jurisdictional issues with cross-border infringement complicate enforcement
  - Judicial backlog and delays impede timely resolution of copyright cases
  - Need for specialized intellectual property courts or divisions
- **Digital Transformation:**
  - Challenge of balancing copyright protection to support economic growth while ensuring access to knowledge
  - Particularly important as Bangladesh aims to become a "Digital Bangladesh"
  - Digital technologies have simplified unauthorized reproduction and distribution
  - Emerging technologies continue to present new copyright challenges
  - Need for flexible legal framework that can adapt to technological change
- **Education and Awareness:**
  - Increased public awareness regarding copyright laws and implications of infringement required
  - Specific education for stakeholders in creative and technology industries needed
  - Understanding of emerging licensing models (open source, Creative Commons) increasingly important
  - Copyright curriculum being developed for law schools and technical universities
  - Public campaigns to promote respect for intellectual property rights
- **Balancing Public Interest:**
  - Ensuring copyright protection promotes rather than hinders innovation
  - Maintaining access to educational and research materials
  - Addressing needs of persons with disabilities through appropriate exceptions
  - Supporting local creative industries while ensuring cultural participation
  - Finding appropriate balance for a developing economy transitioning to middle-income status