

# Intellectual Property (IP) Law

## Bangladesh

# INTELLECTUAL PROPERTY

- ❖ Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories:
- ❖ **Industrial Property** includes patents for inventions, trademarks, industrial designs and geographical indications.
- ❖ **Copyright** covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

❖ Source: [https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo\\_pub\\_450.pdf](https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf)

# WHAT ARE INTELLECTUAL PROPERTY RIGHTS?

- ❖ Intellectual property rights are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation.
- ❖ These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions.
- ❖ The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property(1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).

❖ Source: [https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo\\_pub\\_450.pdf](https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf)

# WHY PROTECTING IP RIGHTS

- ❖ First, the progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture.
  - ❖ Second, the legal protection of new creations encourages the commitment of additional resources for further innovation.
  - ❖ Third, the promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life.
  - ❖ World Intellectual Property Organization is the administrative body that protects the IP rights internationally.
- ❖ Source: [https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo\\_pub\\_450.pdf](https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf)
- ❖ Bangladesh is party to the following WIPO administered treaties: Berne Convention, Paris Convention and WIPO Convention

# INTELLECTUAL PROPERTY IN BANGLADESH

- ❖ The Patents and Designs Act of 1911 & the Patent and Design Rules of 1933: Patent is registered for 16 years from the date of registration; Initial Term of Registration of Design is 5 years
- ❖ The Trademarks Act 2009 & Trademark Rules 2015: 7 years from the date of application;
- ❖ The Copyright Act 2000 & Copyright Rules 2010: Lifetime + 60 Years; and
- ❖ The Geographical Indication Goods (Registration & Protection) Act 2013 & Geographical Indication Goods Rules 2015. “geographical indication of goods” means a geographical indication of agricultural or natural or manufactured goods which identifies its originating country or territory, or a region or locality of that country or territory, where any specific quality, reputation or other characteristic of the goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods, one of the activities of either production or processing or preparation of the goods concerned conceivably takes place in such territory, region or locality as the case may be-Sec. 2(9), Registration valid until cancelled or invalidated-Sec. 16;
- ❖ Registration providing authority: Department of Patents, Designs and Trademarks (DPDT), Ministry of Industries, Dhaka

# TERMS FOR SPECIFIC COPYRIGHT

- ❖ 26. Term of copyright in cinematograph film.- In the case of a cinematograph film, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the film is published.
- ❖ 27. Term of copyright in sound recording.- In the case of sound recording, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the sound recording is published.
- ❖ 28. Term of copyright in photographs.- In the case of a photograph, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the photograph is published.
- ❖ 28A. Term of copyright in computer programme: In the case of a computer programme, the copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the programme is published
- ❖ 33. Broadcast reproduction right.- (1) Every broadcasting organization shall have a special right to be known as "broadcast reproduction right" in respect of its broadcasts. (2) The broadcast reproduction right shall subsist until 25(twenty-five)years from the beginning of the calendar year next following the year in which the broadcast is made.
- ❖ 35. Performer's right.-(1) Where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance. (2) The performer's right shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first performed.

# PUNISHMENT FOR INFRINGING A COPYRIGHT

- ❖ 82. Offences of infringement of copyright or other rights conferred by this Act.- (1) ....shall be punished with imprisonment for a term which may extend to four years but not less than six months and with fine which may extend to taka two lakh but not less than taka 50,000 (fifty) thousand: Provided that if it is proved to the satisfaction of the court that the infringement has not been made for gain in the course of trade or business, the court may impose a sentence of imprisonment for a term of less than six months and a fine of less than taka fifty thousand (2) Any person who willingly infringes or abets the infringement of copyright in a cinematograph film, shall be punished with imprisonment which may extend to five years but not less than one year and with a fine of not exceeding five lakh but not less than one lakh.
- ❖ 83. Enhanced penalty for second and subsequent offences.- Whoever having already been convicted of an offence under section 82 is again convicted of any such offence shall be punished for the second and for every subsequent offence, with imprisonment for a term which may extend to three years but not less than one year and with fine which may extend to taka three lakh but not less than taka one lakh: Provided that if it is proved to the satisfaction of the court that the infringement has not been made for gain in the course of trade or business as described in section 82(1), the court may impose a sentence of imprisonment for a term of less than one year and a fine of less than taka one lakh: Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of this Act

# PUNISHMENT FOR INFRINGING A COPYRIGHT

- ❖ 84. Offence relating to publication, use etc of infringing copy of computer programme.-  
Any person who-
- ❖ (a) infringes the copyright in a work of computer programme, publishes it in any medium, sells or distributes it more than one copy, shall be punished with imprisonment for a term which may extend to four years and shall not be less than six months or with fine which may extend to taka four lakh and shall not be less than taka one lakh.
- ❖ (b) uses an infringed copy in computer shall be punished with imprisonment which may extend to 3 three years but not less than six months or with a fine which may extend to taka three lakh and not less than taka one lakh. Provided that if it is proved to the satisfaction of the court that the infringement has not been made for gain in the course of trade or business, the court may impose any sentence of imprisonment for a term of less than three months and a fine of less than taka twenty five thousand.

# POWER TO SEARCH

- ❖ 93. Power of police to seize infringing copies.- (1) Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under section 82 in respect of the infringement of copyright in any work has been or under section 84 in respect of infringement of copyright in computer work, is being, or is likely to be, committed, seize without warrant all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate. (2) Any person having an interest in any copies of a work or equipment or materials or plates seized under sub-section (1) may, within 15 (fifteen) days of such seizure, make an application to the Magistrate for such copies or plates being restored to him and the Magistrate, after such hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.

# ANTON-PILLAR ORDER

- ❖ “The form of the order makes it plain that the court is not ordering or granting anything equivalent to a search warrant. The order is an **order on the defendant in personam to permit inspection**. It is therefore open to him to refuse to comply with such an order, but at his peril either of further proceedings for contempt of court - in which case, of course, the court will have the widest discretion as to how to deal with it, and if it turns out that the order was made improperly in the first place, the contempt will be dealt with accordingly - but more important, of course, the refusal to comply may be the most damning evidence against the defendant at the subsequent trial. Great responsibility clearly rests on the solicitors for the applicant to ensure that the carrying out of such an order is meticulously carefully done with the fullest respect for the defendant's rights, ...., of applying to the court, should he feel it necessary to do so, before permitting the inspection.”
- ❖ “There are three essential pre-conditions for the making of such an order, in my judgment. First, there must be an extremely strong *prima facie* case. Secondly, the damage, potential or actual, must be very serious for the applicant. Thirdly, there must be clear evidence that the defendants have in their possession incriminating documents or things, and that there is a real possibility that they may destroy such material before any application *inter partes* can be made.”
- ❖ “In the circumstances of the present case, all those conditions to my mind are satisfied, and this order is essential in the interests of justice.”
- ❖ Source: <http://uniset.ca/other/cs3/1976Ch55.html>