

## **The Enforcement of Intellectual Property Rights in Bangladesh**

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### **Abstract**

In this era of globalization and rapid expansion of world economy, intellectual property and the corresponding rights over intellectual property are crucial to the economic, social and technological development of any country beyond doubt. Globalization also has made the intellectual property rights a subject matter of international concern. All nations who want to promote and protect their development in all aspects must protect the rights over intellectual property by granting legal veil through exclusive enactments. In today's world, intellectual property surrounds us in nearly everything we do. No matter what we do, we are surrounded by the fruits of human creativity and invention. In the knowledge based new economy, the intellectual property (hereinafter, IP) community has entered a new era characterized by the rapid expansion of demand for new forms of intellectual property protection, greater global coverage. As a result, IP is no longer to be perceived as a distinct or self-contained domain, rather as an important and efficient policy investment that is relevant to a wide range of socio-economic, technological and political environmental concern. Realizing this fact, all industrialized countries of the world have enacted laws for the protection of 'works of mind'. To comply with the international obligations Bangladesh also has introduced intellectual property rights protection system. This study is an overview of the enforcement mechanism of intellectual property rights in Bangladesh and the development of intellectual property law in Bangladesh. The main objective of this study is to seek how enforcement mechanisms

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in Bangladesh are intrinsically precious, effective and thenceforth, worth in protecting the rights of IP holders. As an obvious flow of discussion the paper reiterates to look beyond the constraint and formulation of a comprehensive legal framework for IP protection.

**Keywords:** *Intellectual, Invention, protection, imagination & infringement.*

## **Introduction**

Albert Einstein, the father of the modern science said that "Imagination is more important than knowledge". Einstein's preference for imagination over knowledge is a starting point of Intellectual property (IP) which is based on the power of imagination. Einstein understood that it is the ability to stand on an existing foundation of accepted knowledge and see beyond to the next frontier of discovery that is the source of personal, cultural and economic advancement. The world economy, trade and Rapid technological obsolescence and fierce competition in the world trade have made it imperative to protect the innovations using the tool of Intellectual Property Rights (IPR) system. An innovator does not feel encouraged to develop new products without having any rewards or interest on the basis of new products according to Intellectual Property system and an investor will not invest capital into new ideals without the same interest. As a result, innovative initiatives will be obstructed, thus IP protection becomes an indispensable instrument for commercialization of new creation worldwide. Different countries are adopting National Intellectual Property laws with different procedures and time limit of protection. This heterogeneity in the world Intellectual Property Right system creates bars and problems in smooth operation of free world trade. To remove these trade barriers TRIPS (Trade Related Aspects of Intellectual Property Rights) agreement was brought in screen by WTO in 1995. It expressed necessity of new multinational companies/organizations a minimum standard for protection of IPR as well as procedures and process for their enforcement. It also announced out in elaborately the responsibilities of the member countries to set standard in their national laws for the protection of IP

rights as well as procedures for executing rights against infringement. Modernization of national IP laws for Bangladesh is very difficult as it requires expertise, infrastructure, adaptations and enforcement of new rules which is not in place now. Yet the Government of Bangladesh has taken necessary steps to modernize and update its legislations on IPR through new laws on Copyright, Patents, Trademarks and Designs and Plant breeder's right in compliance with the provisions of the TRIPS Agreement.

### **Objectives of the Study**

The ultimate objectives of this paper are as follows;

- To define the intellectual property and its development in Bangladesh;
- To describe the nature and basis of intellectual property;
- To identify the factors contributing to the infringement of intellectual property rights;
- To observe the measures taken by the govt. of Bangladesh and the international institutions for the protection of intellectual property rights;
- To analyze the coverage and strength of international and domestic instruments regarding intellectual property for the protection of intellectual property rights; and
- To develop an explanatory theory that will help to raise voice for the protection of rights of IP holders and this study will also try to recommend some policies for protecting the rights of IP holders.

### **Intellectual Property Rights**

The World Intellectual Property Organization (WIPO) provides that 'intellectual property' shall include rights relating to:

- a. Literary, artistic and scientific works
- b. Performances of performing artists, phonograms and broadcasts
- c. Inventions in all fields of human endeavor
- d. Scientific discoveries
- e. Industrial designs
- f. Trademarks, service marks and commercial names and designations

- g. Protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. According to the list of TRIPS agreement intellectual property rights cover the following areas: - (a) Copyrights and related rights (i.e., rights of performers, producer of sound recordings and broadcasting organizations) (b) Trademarks including service marks (c) Geographical Indications including appellation of origins (d) Industrial designs. (e) Patents including protection of new varieties of plants (f) Layout designs (Topographies) of integrated circuits (g) Protection of undisclosed information including trade secret and test data.

### **Kinds of Intellectual Property**

There are different kinds of Intellectual property rights i.e. patents, copyright, industrial design rights, trademarks, trade dress, and in some jurisdictions trade secrets. There are also more specialized varieties of sui generis. Exclusive rights, such as topographies of semiconductor products, plant breeders' rights, plant variety rights, industrial design rights, supplementary protection certificates for pharmaceutical products and database rights.<sup>3</sup>

#### **a. Patents**

A patent grants an inventor the right of making, using, selling, offering to sell, and importing an invention for a limited period of time, in exchange for the public disclosure of the invention. Patent is a document issued upon application by the government office describing an invention and creates a legal situation in which patented invention can normally be exploited with the authorization of the owner of the patent.

#### **b. Copyright**

A copyright gives the author of an original work exclusive right to it, usually for a limited time. Copyright approves a wide range of creative, intellectual, or artistic forms, or "works".

<sup>3</sup> [http://en.wikipedia.org/wiki/Intellectual\\_property](http://en.wikipedia.org/wiki/Intellectual_property) (Accessed on 20th November, 2014)

Copyrights include artistic creations such as poems, novels, music, paintings, cinematographic works etc.<sup>4</sup> The expression 'copyright' refers to the main act of literary and artistic creations, made only by the author or with his authorization. That the making of copy of the literary or artistic work, such as a book, a painting, a sculpture, a photograph, a motion picture.

### **c. Industrial Design**

Industrial Design belongs to the aesthetic field to serve as the patterns for the manufacture of products of industry or handicraft. An industrial design right protects the visual design of subjects that are not purely utilitarian. An industrial design includes of the creation of a shape, configuration or composition of pattern or color, or combination of pattern and color in three-dimensional form containing aesthetic value.

### **d. Trademark**

A trademark is a recognizable sign, design or expression which showing distinguishes between products or services of a particular trader from the similar products or services of other traders. A trademark is a symbol which is indicates the responsible for the goods placed before the public. Different makers or sellers of the same goods use (different) trademarks. The public use trademarks in order to choose whose goods they will purchase. If they are satisfied with the goods they purchased they can then repeat their order simply by using the trademark. It is not necessary to know who actually owns the trademark.

### **e. Trade Dress**

Trade dress is a legal term of art that generally refers to characteristics of the visual appearance of a product or its packaging or even the design of a building that signify the source of the product to consumers.

### **f. Trade Secrets**

A trade secret is a formula, practice, process, design, instrument, pattern,

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<sup>4</sup> ibid

or compilation of information which is not generally ascertainable, by which a business can obtain an economic advantage over competitors or customers. Trade secret law varies from country to country.<sup>5</sup>

### **Infringement of Intellectual Property Rights**

"Infringement" is the violation of intellectual property rights in relation to patents, copyright, and trademarks, and "misappropriation" in relation to trade secrets, may be a breach of civil law or criminal law depends on the type of intellectual property involved, jurisdiction, and the nature of the action.

#### **a. Patent Infringement**

Patent infringement means using or selling a patented invention without permission from the patent holder. The scope of the patented invention or the extent of protection is defined in the claims of the granted patent (Firth and Philips, 1995).

#### **b. Copyright Infringement**

If any person or body is reproducing, distributing, displaying or performing a work, or to make derivative works, without permission from the copyright holder, which is typically a publisher or other business representing or assigned by the work's creator is called copyright infringement which is commonly known as "piracy". If the owner registers the copyright he can claim damages. Enforcement of copyright is generally the responsibility of the copyright holder.

#### **c. Trademark Infringement**

Trademark infringement occurs when one party uses a trademark which is identical or confusingly similar to a trademark owned by another party, in relation to products or services which are identical or similar to the products or services of the other party. In case of copyright common law rights protecting a trademark, but registering a trademark provides legal advantages for enforcement. Infringement can be addressed by civil suit and, in several jurisdictions, under criminal law.

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<sup>5</sup> Ibid

#### **d. Trade Secret Misappropriation**

Patents and registered copyrights and trademarks are publicly available but by definition trade secrets are secret and trade secret misappropriation is different from violations of other intellectual property laws. Confidentiality and trade secrets are regarded as an equitable right rather than a property right but penalties for theft are roughly in the Commonwealth common law jurisdictions.<sup>6</sup>

#### **World Intellectual Property Organization (WIPO)**

World Intellectual Property Organization (WIPO) is the world organization to work for the development and protection of IP rights. It assists governments and organizations to develop the policies, structures and skills needed to harness the potential of IP for economic development. It coordinates international treaties regarding intellectual property rights. Its 184 member states comprise over 90% of the countries of the world, who participate in WIPO to negotiate on intellectual property matters such as patents, copyrights and trademarks.<sup>7</sup> The agreement between the UN and WIPO work for appropriate action in accordance with its basic instrument, treaties and agreements administered by it. It is promoting creative intellectual activity and facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development.<sup>8</sup>

#### **a. Structure**

General Assembly elects an executive committee consisting of one-fourth of the member states who meets annually. WIPO itself has four organs: the General Assembly, the Conference, the Coordination Committee, and a secretariat called the International Bureau.

#### **b. Functions**

The WIPO main functions are :<sup>9</sup>

<sup>6</sup> Supra Note 2

<sup>7</sup> [http://www.encyclopedia.com/topic/World\\_Intellectual\\_Property\\_Organization.aspx](http://www.encyclopedia.com/topic/World_Intellectual_Property_Organization.aspx) (Accessed on 5th December, 2014)

<sup>8</sup> Background Reading Material on Intellectual Property, WIPO publication no. 659E, ISBN 92-805-0184-4, pg. 37-38

<sup>9</sup> <http://www.simplydecoded.com/2013/04/10/introduction-to-wipo-its-functions/> (Accessed

assisting campaigns development to improve IP protection all over the world and to harmonize national legislations in this field;

signing international agreements on IP protection;

applying the administrative functions of the Paris and Berne Unions;

rendering technical and legal assistance in the field of IP;

collecting and disseminating the information, conducting researches and publishing their results;

ensuring the work of the services facilitating the international IP protection; and

applying any other appropriate actions.

The prime and most important WIPO function is administering multilateral international conventions, i.e. depositing treaties, states' instruments of accession, of conflicts settlement, ensuring treaties review, applying the registration functions for treaties reviewing the international registration of IP objects.<sup>10</sup> Today, the WIPO administers the treaties in the fields of industrial property, copyright and related rights.

### **Paris Convention for the Protection of Industrial Property**

The first intellectual property treaties is the Paris Convention for the Protection of Industrial Property which was signed in Paris, France, on 20 March 1883. It established a Union for protecting the industrial property.<sup>11</sup> The substantive provisions are divided into three main categories: national treatment, priority right and common rules. Notably, Taiwan and Burma are not parties to the Convention. However, according to Article 27 of its Patent Act, Taiwan recognizes priority claims from contracting members.<sup>12</sup>

### **1. Berne Convention for the Protection of Literary and Artistic Works**

The Berne Convention for the Protection of Literary and Artistic Works is an international agreement governing copyright, which was

<sup>10.</sup> *ibid*

<sup>11.</sup> [http://en.wikipedia.org/wiki/Paris\\_Convention\\_for\\_the\\_Protection\\_of\\_Industrial\\_Property](http://en.wikipedia.org/wiki/Paris_Convention_for_the_Protection_of_Industrial_Property) (Accessed on 6th December, 2014)

<sup>12.</sup> [http://en.wikipedia.org/wiki/Paris\\_Convention\\_for\\_the\\_Protection\\_of\\_Industrial\\_Property](http://en.wikipedia.org/wiki/Paris_Convention_for_the_Protection_of_Industrial_Property) (Accessed on 6th December, 2014)



first accepted in Berne, Switzerland, in 1886.<sup>13</sup> The Berne Convention allows every signatories to recognize the copyright of works of authors from other signatory countries (known as members of the Berne Union) in the same way as it recognizes the copyright of its own nationals.

## **2. Laws on Intellectual Property in Bangladesh**

Bangladesh inherited the legal framework on intellectual property (IP) dating back to the British-India. The Patents, Designs and Trademarks Act of 1883 is the earliest legislation found to protect IP. Subsequently it was repealed and the new Patents and Designs Act was enacted in 1911 and the Trademarks Act in 1940. In 2003, both the Patents and Designs Act, 1911 and the Trademarks Act, 1940 were amended and the Department of Patents, Designs and Trademarks (DPDT) was formed under the Ministry of Industries merging two independently operational offices - the Patent Office and the Trademark Registry Office. In 2008, the Trademarks Ordinance was promulgated and in 2009, the Trademarks Act was enacted. Copyright system in Bangladesh was originated from the British copyright system and later the copyright ordinance, 1962, an amalgamation of existing different copyright laws was promulgated. This ordinance was administered up to 1999. After that, the Copyright Act, 2000 was enacted in 2000 and was amended in 2005. In addition, "The Penal Code of Bangladesh" comprises several penal laws against the violations of various intellectual property rights (IPR). Bangladesh participated in the convention establishing the World Intellectual Property Organization (WIPO) on May 11, 1985. Bangladesh became a member of the Paris Convention for the Protection of Industrial Property in 1991 and of the Berne Convention for the Protection of Literary and Artistic Works in 1999 (Atia, 2011). Bangladesh is a signatory of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement of the World Trade Organization (WTO), which came into force on January 1, 1995.

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<sup>13</sup>. [http://en.wikipedia.org/wiki/Berne\\_Convention](http://en.wikipedia.org/wiki/Berne_Convention) (Accessed on 10th December, 2014) Wikipedia source should not be used in the research article because Wikipedia is not an authentic source.

The TRIPS Agreement sets detailed, compulsory and common standards for all countries following the dispute settlement system of the WTO. Being a member of LDCs Bangladesh is enjoying the extended transition period to bring herself into compliance with its rules .<sup>14</sup>

To comply with the international obligations Bangladesh has introduced intellectual property rights protection system in protecting the rights of IP holders. Innovation is the key driver of economic growth and development in the short & medium to long term (Atia, 2011). A well-balanced, affordable and reliable system of intellectual property rights has an important role to play in this process.<sup>15</sup> To protect the rights of intellectual property Bangladesh has enacted laws regarding Trademark, Copyright, Patents and designs. The existing laws regarding intellectual property in Bangladesh are as follows:

1. The Patents and Designs Act, 1911.
2. The Trademark Act, 2009.
3. The Copyright Act, 2000.

We will discuss the basic features and protection measures for IP under those instruments.

### **The Trademark Act, 2009**

A trademark is a visual symbol in the form of a word, a device or a label applied to articles of commerce with a view to indicate to the purchasing public that they are the goods manufactured or otherwise dealt in by a particular person as distinguished from similar goods manufactured or dealt in by other persons.

#### **a. Trademark Defined**

The Trademark Act, 2009 (hereinafter referred as the Act, 2009) regulates trademarks in Bangladesh. As per section 2(23) of the Act, "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, or numeral or any combination thereof. The Act, 2009 defined trademark as-

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<sup>14</sup>. <http://www.markscan.co.in/SiteImg/BRPJ.pdf> (Accessed on 20th December, 2014)

<sup>15</sup>. *ibid*

- (a) any registered trademark or any mark which is used in relation to any goods for the purpose of indicating rights of the user/proprietor of the mark on that goods in the course of trade.
- (b) any mark which is used in relation to any service for the purpose of indicating rights of the user/proprietor of the mark on that service in the course of trade.<sup>16</sup>

### **b. Functions of a Trademark**

Under modern business conditions a trademark performs four functions (Atia, 2011)-

- (a) It identifies the product and its origin; that is, it represents the manufacturing company. For example, Radhuni of Square.
- (b) It guarantees its unchanged quality.
- (c) It advertises the product.
- (d) It creates an image for the product.

### **c. Which Marks are Register able**

It must be distinctive. (Section # 6<sup>17</sup>) Distinctiveness is one of the prime criteria for the registration of a trademark. How distinctiveness can be determined:

- (a) Common sense.
- (b) Discretionary reaction.

Section 6 of the Act, 2009 imposes some preconditions for registration. Section 6 mentions a trademark shall not be registered unless it contains or consists of at least one of the following particulars, namely-

- (a) The name of a company, individual or firm represented in special or particular manner.
- (b) The signature of the applicant for registration or some predecessor in his business.
- (c) One or more invented words.
- (d) One or more words having no direct reference to the character or quality of goods and not being according to its ordinary

<sup>16</sup>. Section 2(8) of the Trademark Act, 2009, Bangladesh.

<sup>17</sup>. Section 6, Ibid.

signification, a geographical name or surname or the name of the sect, caste or tribe in Bangladesh.

(e) Any other distinctive mark.

#### **d. Deceptive Similarities are not Acceptable**

Section: 10<sup>18</sup> As per section 2(20) of the Act, 2009 "deceptively similar mark" means any mark which is likely to deceive or cause confusion and which is similar to any mark, registered under the Act. Section 10 of the Act, 2009 imposes prohibitions on registering trademarks with similarity or deceptive similarity, which are as follows: Section 10(1): a trademark shall not be registered if it is identical with or deceptively similar to an earlier trademark and goods and services covered by the trademark, registered in the name of another owner. Section 10(2): joint/concurrent uses of a trademark can be approved by the Registrar under suitable terms and conditions for any honest purposes or reasonable causes. Section 10(4): trademark of any goods or service shall not be registered if it is formed by translation of any identical mark or trade description of other business firm which is well-known in the country. Section 10 (5): in case of similarity to any well-known trademark, trademark of that goods or service shall not be registered, if - (a) it may create wrong conception that said goods or service has relation with the registered owner.(b) said uses may cause violation of rights or ruin interest of the registered owner. Section 10 (7): prohibitions under the provisions of deceptive similarity shall not make any obstacle to register a trademark if there is consent of the owner of the earlier registered trademark.

Deceptive similarity includes not only confusion but also deception. Factors to be taken into consideration in determining deceptive similarities:

- (a) the nature of the marks;
- (b) the degree of resemblance;
- (c) the nature of the goods or services;

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<sup>18</sup>. Section 10, of the Trademark Act, 2009, Bangladesh..

- (d) the class of the consumers (their level of education and intelligence);
- (e) any other surrounding circumstances.

**e. Characteristics of Good Trademarks**

- (a) it must be easy to pronounce and remember, if the mark is a word;
- (b) it must be easy to spell correctly and write legibly;
- (c) it should not be descriptive but may be suggestive of the quality of the goods;
- (d) it should be short;
- (e) it should appeal to the eye as well as to the ear;
- (f) it should satisfy the requirements of registration;
- (g) it should not belong to the class of marks prohibited for registration.

**f. Which Marks are not Register able**

As per section 8 of the Act, 2009, no trademark nor part of a trademark shall be registered if -

- (a) it comprises or contains scandalous obscene matter;
- (b) be contrary to any existing law;
- (c) it is of such nature as to deceive the public or to cause confusion;
- (d) be likely to hurt the religious susceptibilities of any class of the citizens of Bangladesh;
- (e) it uses name, first letter of a name, hallmark, monogram, map, flag, symbol, sign, of a country or international organization or any organization formed through international treaty or convention without approval of the competent authority or person; or it contains identical, partially identical or part of it.
- (f) is not fit for obtaining the protection of Court for any other reasons;
- (g) any application is made for ill-motives or by adopting unfair means.

## **g. Registration Procedure**

### **Who can Apply and how**

Section 15(1)<sup>19</sup> :if the proprietor of a trademark used or proposed to be used desires to register it shall apply in the prescribed manner to the Registrar. As per section 15(2)<sup>20</sup> separate applications must be made for each class of goods or services.<sup>21</sup>

### **Where to Apply**

Section 15(3)<sup>22</sup> in case of single applicant, application shall be filed in the office of the Trademarks Registry within whose territorial limits the head office of business of the applicant is situated. In case of joint applicants, application shall be filed in the office of Trademark registry under whose territorial limits the head office of business of the applicant whose name is first mentioned in the application is situated. As per section 15(4) of the Act, if the applicant does not carry on business in Bangladesh, application is to be submitted in the office of the Trademarks Registry where the correspondence office of the applicant is situated.

## **h. Registration**

As per section 20 of the Act, 2009 the Registrar shall register an applied trademark giving effectiveness from the date of application on the following situations:

- (a) an application for registration of a trademark has been accepted;
- (b) the application has not been opposed and the time for notice of opposition has expired;
- (c) the application has been opposed, and the related decisions has been taken in favor of the applicant.

As per section 20(2), on registration of a trademark, the Registrar shall issue to the applicant a certificate in the prescribed form, sealed with the seal of the Trademarks Registry.

<sup>19</sup>. The Trademark Act, 2009, Bangladesh.

<sup>20</sup>. *ibid*

<sup>21</sup>. Section 15 of the Act 2009.

<sup>22</sup>. The Trademark Act, 2009, Bangladesh.

### **i. Duration, Renewal and Restoration of Registration**

As per section 22(1)<sup>23</sup> duration/tenure of the registration of a trademark shall be for a period of seven years, but may be renewed. As per section 22(2)<sup>24</sup> upon application made by the proprietor in the prescribed manner and subject to payment of prescribed fee, the Registrar shall renew the registration of a trademark for a period of ten years from the date of expiration of the original or renewed registration. Unless renewed, the trademark will be public property.

### **j. Infringement of Trademark**

Infringement of trademark means using a registered trademark without the consent of its registered proprietor. Section 26(1)<sup>25</sup> defines infringement as "if a person, not being registered proprietor or user, uses any distinctive or deceptively similar trademark in relation to goods or service in his own trade, it will be considered that he has infringed a registered trademark.

### **k. Which Categories of Trademark will be Treated as Infringement**

As per section 26(2)<sup>26</sup> using such trademarks that falls under the following categories will be treated as infringement:

- (a) marks identical and goods or service similar;
- (b) marks similar and goods or service identical;
- (c) marks identical and goods or service identical;

Using following marks will also be considered as infringement as per section 26(3):

- (a) marks identical or similar and goods or service not similar.  
For example, an application to register "Gluvita" as a trademark for biscuit was refused, because similar trademark "Glucovita" is being used for glucose powder by another registered use.
- (b) using a mark without due causes takes unfair advantage of or is detrimental to the distinctive character or repute of a well-reputed registered trademark in Bangladesh.

<sup>23</sup>. The Trademark Act, 2009, Bangladesh.

<sup>24</sup>. ibid

<sup>25</sup>. ibid

<sup>26</sup>. ibid

## **I. Defenses of the Defendant**

In a case of infringement of a trademark, the defendant may plead one or more of the following defenses as may be applicable to his case:

- (a) the plaintiff has no title to the suit;
- (b) registration of the mark is not valid and is liable to be expunged;
- (c) the use of the mark complained of is not an infringement of the registered trademark;
- (d) the defendant's use is prior to the registration and use of the plaintiff.
- (e) the defendant has a right to use by virtue of honest concurrent use;
- (f) the plaintiff's trade is fraudulent, or his trademark is deceptive.

As per section 26(8)<sup>27</sup> (reference), if the defendant in a case of infringement of a trademark can satisfy the Court of the followings:

- (a) the use complained is not likely to deceive or cause confusion to the people;
- (b) it does not indicate a business relationship between the proprietor/user of a registered trademark and any goods or service under such mark complained of;

In such case, the Court will not impose any sanction or grant any other relief in favor of the plaintiff.

## **The Copyright Act, 2000**

The basic legal instrument governing copyright law in Bangladesh is the Copyright Act, 2000 (hereinafter referred as the Act, 2000).

### **a. Objects of Copyright**

According to section 15<sup>28</sup> copyright subsists in

- literary works
- dramatic works
- musical works
- artistic works (i.e. painting, sculpture, drawing, engraving or a

<sup>27.</sup> ibid

<sup>28.</sup> Section 15 of the Act, 2000, Bangladesh.



photograph, a work of architecture and any other work of artistic craftsmanship)  
 cinematographic films  
 sound recordings

and includes computer programmes (s. 14 sub-s. 2<sup>29</sup>) as well as addresses and speeches (s. 17 cl. d<sup>30</sup>). Foreign works are covered by section 69 read with the International Copyright Order, 2005.

### **b. Owner of Copyright**

The first owner of copyright in general is the author (exceptions: works for hire, Government works; s. 17<sup>31</sup>). The owner of copyright may assign the copyright (s. 18<sup>32</sup>) or grant any interest in the copyright by license (s. 48<sup>33</sup>). Licenses may also be granted by the Copyright Board (ss. 50-54<sup>34</sup>). Registration of copyright with the Copyright Office is not obligatory, but if registration has taken place the Register of Copyrights gives prima facie evidence of the particulars entered therein (s. 60<sup>35</sup>).

### **c. Term of Copyright**

Copyright in a literary, dramatic, musical or artistic work published within the life time of the author subsists until 60 years from the beginning of the calendar year next following the year in which the author dies (s. 24<sup>36</sup>). Copyright in a cinematographic film (s. 26<sup>37</sup>), a sound recording (s. 27<sup>38</sup>), a photograph (s. 28<sup>39</sup>), a computer programme (s. 28A<sup>40</sup>) or a work of the Government, a local authority or an international organization (ss. 30-32<sup>41</sup>) subsists until 60 years from the beginning of the calendar year next following the publication of the work.

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29. The Copyright Act, 2000, Bangladesh

30. *ibid*

31. *ibid*

32. *ibid*

33. *ibid*

34. *ibid*

35. *ibid*

36. *ibid*

37. *ibid*

38. *ibid*

39. *ibid*

40. *ibid*

41. *ibid*

#### **d. Meaning of Copy right**

Copyright means inter alia the exclusive right

to reproduce the work

to issue copies of the work to the public

to perform or broadcast the work

to make any translation or adaption of the work (for details see s. 14).

In addition, special moral rights lie with the author (s. 78<sup>42</sup>) as well as a droit de suite (s. 23<sup>43</sup>).

#### **e. Copyright Infringement**

When copyright is infringed (s. 71<sup>44</sup>), the owner of copyright (as well as the exclusive licensee) is entitled to certain civil remedies (injunction, damages, accounts; s. 76). Jurisdiction lies with the court of District Judge of the place where the person instituting the proceeding resides or carries on business (s. 81). Infringing copies are deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of possession thereof or in respect of the conversion thereof (s. 79). Infringing copies may be seized by the police (s. 93) and can be forbidden to be imported (s. 74). Copyright infringement may also lead to criminal charges (ss. 82 to 91) to be tried by no court inferior to that of a Court of Sessions (s. 92<sup>45</sup>).

#### **The Patents and Designs Act, 1911**

Patent is a right of an inventor upon his new invented thing. It is a document issued by the Registrar of the Department of Patents, Designs and Trademarks to the inventor as regards his invented thing by which he can exclude others from unauthorized use. In order to make, use or sell anything, the owner of a patented invention must seek authorization from the Department. The Patentee may use his rights himself or assign them or grant licenses. An invention must meet several conditions if it is to be eligible for patent protection.

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42. ibid

43. ibid

44. ibid

45. ibid

These, most significantly, that the invention must consist of patentable subject matter, the invention must be industrially applicable (useful), it must be new (novel), it must exhibit a sufficient "inventive step" (be non-obvious), and the disclosure of the invention in the patent application must meet certain standards.<sup>46</sup> Any person, whether he or she is a citizen of Bangladesh or not, and either alone or jointly with any other person, may apply for a patent. The protection conferred by the patent is limited in time (generally 20 years); but in Bangladesh it is 16 years. Any person who is interested to get patent letter or patent protection he must make an application to the Patent Office by fulfilling the conditions of the Act, that is, an invention must have industrial applicability, novelty and non-obviousness (inventive step); it should not be contrary to law or morality.<sup>47</sup>

If any person makes sells or uses an invention without the license of patentee, or counterfeits it, or imitates it is an infringement of a patent. If there is an infringement of a patent by any person, the patentee may institute a suit against the person in a District Court having jurisdiction to try the suit. The legislation provides remedies for any infringement of a patent. The remedy is civil in nature, and includes both interim and final remedies. The interim or preliminary remedies include an order for an injunction, inspection or account while final remedies include financial compensation.<sup>48</sup>

## **Legal Action and Remedies**

**1. Civil remedies-** Civil suits offer remedy for claiming compensation for infringement of copyright and loss of profits as well. The owner of the copyright can file civil action in which reliefs such as Anton Pillar Order injunction, accounts and damages can be sought. A suit or other civil proceedings involving to infringement of copyright is to be filed in the Court of District Judge, within whose

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<sup>46.</sup> The Patents and Designs Act, 1911

<sup>47.</sup> *ibid*

<sup>48.</sup> *ibid*

jurisdiction the plaintiff resides or carries on business or where the cause of action arose irrespective of the place of residence or place of business of the defendant.<sup>49</sup>

**2. Criminal remedies** - Criminal remedies grant for the imprisonment of the accused or imposition of fine or both, seizure of infringing copies etc. Normally a person can claim under Penal Code of Bangladesh for criminal misappropriation. But criminal proceedings are available in order to punish the persons who have violated the copyright law under Copyright Act as special law. The infringement of copyright is a cognizable offence and is punishable with imprisonment for a period extending from six months to four years and a fine ranging from Tk. 50,000/- to Tk. 2,00,000/<sup>50</sup>. The Act also provides for seizure of infringing copies and confiscation of all duplicating equipment used for manufacturing counterfeit copies. However, if the court is satisfied that infringement is committed without having an intention for profit or noncommercial purpose, the court may give lesser punishment, which may be imprisonment for less than six months and fine for less than 50, 000 taka<sup>51</sup>. However, in case of piracy of computer programs, the amount of fine is extended by an amendment<sup>52</sup>, which is now minimum Tk. 1, 00000 and maximum Tk. 4, 00000<sup>53</sup>, if it is committed for commercial purpose. However, in case of mere use of infringing copy or if the court is satisfied that it is committed for non-commercial purpose; the court may impose lesser punishment and lesser fine as well.

**3. Administrative remedies** -The owner can move to the Registrar of copyrights to ban the import of infringing copies into Bangladesh, when the infringement is by way of such importation and the delivery of the confiscated infringing copies to the owner of the copyright.

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49. Code of Civil Procedure 1908

50. The Copyright Act, 2000, Bangladesh

51. *ibid*

52. The Copyright Amendment Act on May 18, 2005

53. *ibid*

**4. Patents-** under the Patents and Designs Act, 1911 the remedy is available in form of injunction, delivering up of infringed patented product, damages for an account of the profits. Besides, certain acts of infringement have been made liable to be punished by offences to be judged by criminal courts.

**5. Designs-** the Patents and Designs Act, 1911 provides civil remedies for the infringement of the copyright of a registered design.<sup>54</sup> Last but not the least, level of skill and awareness of public in general, government officials and profession regarding IP rights is at a marginal stand (Atia, 2011).

### **Department of Patents, Design and Trademarks (DPDT)**

Initially, the Patent Office and the Trademarks Registry Office worked separately under the Controller of Patents & Designs and Registrar of Trade Marks respectively. Both offices were merged into the Department of Patents, Design & Trademarks in 1989. The MoI was entrusted with the responsibilities of administering the activities of DPDT.<sup>55</sup> The patents and design wings of the DPDT deals with the matters related to patents and designs, while the trademark registry wing grants registration for trademarks. The DPDT is also expected to administer GIs and utility models, after the respective laws, which are in the process of formulation, are enacted. The DPDT is located in Dhaka and has one regional office at the port city of Chittagong. It does not have any institutional arrangements with any district level organization or department to provide regional services on behalf of them.<sup>56</sup> The DPDT operates in an inadequate office space and does not have a separate establishment for preserving records. As a consequence, the records are maintained manually within the office premises and there are chances of loss and misplacement of credentials. There are several other limitations including a shortage of adequate economic resources and manpower.

<sup>54</sup>. Supra Note 27

<sup>55</sup>. [http://dpdt.portal.gov.bd/sites/default/files/files/dpdt.portal.gov.bd/notices/5c4a8a90\\_d825\\_46f9\\_8cc8\\_3505e47e0053/IP%20Policy.KS.pdf](http://dpdt.portal.gov.bd/sites/default/files/files/dpdt.portal.gov.bd/notices/5c4a8a90_d825_46f9_8cc8_3505e47e0053/IP%20Policy.KS.pdf) (Accessed on 22nd December, 2014)

<sup>56</sup>. *ibid*

Moreover, DPDT staffs do not bear adequate technical and legal knowledge on IP issues. It is rare for the technical personnel and managers of the DPDT to avail opportunity to avail in country or foreign trainings on IP issues and acquire specialized knowledge on the subject. With support of an EU-funded project, a very basic level of automation was accomplished in the DPDT, which covers nearly 5% of the total activities of the organization.<sup>57</sup>

### **Findings of the Study**

The study examined the historical evolution and the development of intellectual property law in Bangladesh. I also tried to identify the factors contributing to the infringement of intellectual property rights. The motive of this study was also to find out the enforcement procedure of national IP laws for the protection of intellectual property rights. On the basis of all this discussions, this paper has some findings as are given below:-

1. Intellectual properties laws in Bangladesh are not adequate. Some of them are not compatible with international treaties and conventions. Some of them are not advanced with the digital based society.
2. In Bangladesh there are no laws on trade secrets, unfair competition, and geographical indication and lay out design (topographies) of integrated circuits still today.
3. Institutional capacity of DPDT (Department of Patents, Designs and Trademarks) and Copyright Office are very poor due to manual system, shortage of number of officers and staff, expert on intellectual property.
4. Besides, peoples are not aware about these tights.
5. Copyright piracy is very frequent and the rate is highest amongst the world.

### **Recommendations**

1. Introducing basic concept on IP laws to the undergraduates and post graduates courses in colleges and universities with specific courses;

<sup>57</sup>. Ibid

2. Creating alertness through seminar, symposiums and national workshops among the all classes' educated people of the country;
3. Establishing IP Protection courts, at least, in the divisional level and training the judges and advocates and thus making the skilled;
4. Developing mechanism to ensure prompt and cheap resolution of disputes and litigation by infringement;
5. Employing special branch of the members of law forces for the implementation of the IP laws and training them.
6. Introducing new laws on trade secrets, unfair competition, geographical indication and lay out design of integrated circuits;
7. modernizing or introducing a new Patents and Designs Act; as the 1911 Act is not compatible with international treaties and convention;
8. Updating Trademark Rules; because Trademark Rules 1963 are unable to meet the IP requirement of 2020. Besides, under the 2009 Act, new provision of collective mark has been inserted but the procedure of registration of it has not been point out in the Act, 2009. The procedure of publication of trademark journal is not specified in the current law; it should be determined by the new rules. Different forms of trademark, service mark, certification mark or collective mark should be updated to maintain the uniformity of the digital based society. So, the replacement of 1963 Rules with a new one is a necessity; and
9. Appointing necessary officers and staff for the DPDT and Copyright office and training them on IP laws at home and abroad.

## **Conclusion**

The development and protection of intellectual property rights largely depends on the useful enforcement mechanism. Strong enforcement mechanisms for the protection of intellectual property rights promote an environment in which creative and innovation

industries can thrive and contribute to economic expansion. Though the government has modernized laws on the point but it is evident from the above discussion that the present legal framework as well as administrative set up is insufficient to provide expected protection of intellectual property for entrepreneurs who seek to protect their invention, trademark and other intangible business property. In any initiative for better protection and promotion of the rights of IP holders the significance of enhancing public consciousness and skills of concerned officials of the authorized departments can hardly be inflated. An equitable, modernized and protected IP rights regime provides recognition and material benefits to the originator, constitutes motivations to the inventors and innovative activities. In order to maximize utilization of intellectual property rights there is no alternative amending legislation in this area. But the most significant thing is the awareness of people in general that can only stop the rampant violation of intellectual property rights. Thereby, the government should not only formulate and reform the law on this context rather, should take all crucial steps to make people conscious. Every people should know that they have right for everything both inside and outside.

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