
The Impact of Academic Libraries and Copyright Issues: Bangladesh Perspective

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Abstract

Library is the key place for copyright violation process. As a facilitator, the librarian has connected to authors, publishers, aggregators, distributors, vendors, and users and so on. The toughest task for librarian is to balance copyright and use of copyrighted material within the purview of laws. The librarian can ensure the reputation of organization and may avoid misuse of copyrighted material by its stakeholders by creating awareness about copyright laws. As per the law the person who has infringed the material is solely held responsible for his act. Violating copyright laws would lead to legal disputes between Copyright holder, publisher, distributor, vendor, aggregator and user or stakeholder of concerned institution. The main objective of the study is to highlight the scope of Copyright law on academic library issues in Bangladesh. Both primary and secondary sources have been used during the time of research. Some of the findings of the study indicated that copyright violation and inadequate provisions regarding copyright implementation in Bangladesh is a regular affair. At last some suggestions have been provided to minimize the existing grey areas of academic library and copyright issues.

Keywords: Libraries, Copyright, Copyright Act 2000, Copyright Infringement, Copyright Exception.

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Objectives

Following are the objectives of the research:

1. To highlight the impact of Library and Copyright Protection.
2. To analyse the relationship between Library and Copyright issues.
3. To identify existing impediments and provide possible solutions.

Methodology

Both primary and secondary sources have been used during the time of research. For this research survey method has been employed and collected opinions through questionnaire from experts in the field of law and library science. A survey questionnaire was used to collect data. There were multiple choice questions as well as questions asking for short suggestions. Focus group discussion and interviews were conducted with teachers, librarians and students for data collection to shed light on their perspective. A number of institutions have also been visited to examine their situation.

Introduction

Academic libraries play a key role in education institutions in many spheres, including copyright. Library collections house both copyrighted and public domain materials and their missions are to make these works available to students and faculty in support of teaching, learning, research and scholarship. Some of these copyrighted works are owned by faculty members, universities and publishers but academic libraries also create copyrightable works. Librarians and library staff members develop copyrighted works and libraries often are the moving force behind the work done by colleges and universities to re-examine their copyright ownership policies in light of changing technologies, pedagogies and delivery methods for courses. Copyright is a branch of Intellectual Property Rights and an exclusive legal right given by the judiciary to the creator on his creation. As a creator (he/she/group) has rights to enjoy financial and other benefits associated as per the law over the creation. On the other hand law permits libraries to use copyrighted material for research and academic purpose without any permission from the copyright

holder. Further, any violation or an infringement of fair use of library resources is punishable under copyright act.³

Library

A library is a collection of sources of information and similar resources, made accessible to a defined community for reference or borrowing. It provides physical or digital access to material, and may be a physical building or room, or a virtual space, or both. A library's collection can include books, periodicals, newspapers, manuscripts, films, maps, prints, documents, CDs, cassettes, videotapes, DVDs, Blue-ray discs, E-books, audio books, databases etc. Libraries range in size from a few shelves of books to several million items.

Types of Library

In the current world various sort of library exists. Some of them are given below:

1. **Academic libraries:** Academic libraries are generally located on college and university campuses and primarily serve the students and faculty of that and other academic institutions.
2. **Children's libraries:** Children's libraries are special collections of books intended for juvenile readers and usually kept in separate rooms of general public libraries. Some children's libraries have entire floors or wings dedicated to them in bigger libraries while smaller ones may have a separate room or area for children.
3. **National libraries:** A national library serves as a national repository of information, and has the right of legal deposit, which is a legal requirement that publishers in the country need to deposit a copy of each publication with the library. Unlike a public library, a national library rarely allows citizens to borrow books.
4. **Reference libraries:** A reference library does not lend books and other items; instead, they must be read at the library itself. Typically, such libraries are used for research purposes only.

³ N M Anjaneya Reddy and Aswath Lalitha, "Understanding Copyright Laws: Infringement, Protection and Exceptions" (2016), International Journal of Research in Library Science, Volume 2, Issue 1 (January-June) 2016,48-53. ISSN: 2455-104X.

5. Special libraries: All other libraries, fall into the "special library" category. Many private businesses and public organizations, including hospitals, churches, museums, research laboratories, law firms, and many government departments and agencies, maintain their own libraries for the use of their employees in doing specialized research related to their work. Depending on the particular institution, special libraries may or may not be accessible to the general public or elements thereof. Special libraries are in specialized environments, such as hospitals, corporations, museums, the military, private business, and the government.

Significance of Library

1. For scholars and researches, it is an indispensable source of knowledge and up-to-date information.
2. It fulfils the academic requirements of student, and also provides mental recreation through novels and story-books.
3. The importance of library in schools is immense. There should be at least one library in every school, whether it is a primary, secondary or higher secondary school. The school library should be updated regularly. There should be introduction of new version of books at regular intervals. The books that contain the latest information and bases on the latest syllabus should only be kept in the library. When students get ample opportunity to study in a calm atmosphere with appropriate infrastructure, then it will result in better result at the exams.
4. There is need of libraries in both cities and villages. In recent times, the issue of Adult literacy has been raised by many. These adults, who want to get themselves educated, can go to these libraries and educate themselves.
5. It is very important to acquire the habit of regularly visiting the library. Whatever the teachers teach should be supplemented with library-work. That makes study both sound and satisfactory.
6. Modern libraries are computerizing the system of work. Gradually CDs (Compact Disc) may replace voluminous books like encyclopedias. Readers will just touch one or two keys or click the mouse to get the necessary information flashed on the monitor.

Shortcomings of library in Bangladesh

1. Lack of technically trained staff: Library personnel in Bangladesh, in general, have inadequate knowledge in computers and their uses in libraries. Lack of suitably trained library staff in computers and their uses in libraries hindered the automation process of the libraries in Bangladesh.
2. Insufficient of funds: The libraries in Bangladesh are handicapped by a shortage of funds. As a result measures are not fully taken for financing the automation process. Sometimes the parent organization allocates funds for the purchase of a computer, but not its maintenance.
3. Inadequate Mission and Objectives: There is no formal document stating the mission and objectives for library education in Bangladesh.
4. Insufficient Full time Faculty: Most institutions primarily use part-time faculty for the certificate course and post-graduate diploma course. They have an insufficient number of full-time skilled and experienced faculty members. As a result, the students are not getting the kind of assistance or academic support that they could expect from full time faculty members.
5. Poor Infrastructure: Institutions offering certificates or postgraduate diplomas have no space, adequate classrooms, laboratories for cataloguing and classification, and so on.
6. Inadequate Library Collections: For library science students, the library is like a workshop or a laboratory. Many institutions have either no library at all, or a library with an inadequate collection of textbooks and reference books. Availability of the latest editions of textbooks and reference sources is altogether out of the question. Access to electronic databases is still limited or not available to most students due to lack of institutional subscriptions to expensive foreign databases.

Copyright

Copyright is related with a creative artistic or literary expression. The copyrighted material can be a book, a picture, a sculpture, a painting, jewellery designs, a motion picture, music, or anything that is the result of a person's creative mind that take a physical shape and has no function

other than the beauty and creativity of the thing itself. However, copyright only protects the expressive elements of a broad range of works—including books, graphical works, dramatic works, choreography, musical compositions, sound recordings, films, sculpture, architectural works, and computer programmes. It does not extend to facts, ideas, or utilitarian aspects of such works in the form of an article, paper or a book, not the idea as such. Copyright law promotes creativity in literature and the arts by affording authors and artist's lengthy terms of protection against copying.⁴

Protection of Copyright in Bangladesh

In Bangladesh copyright is a subject-matter of statutory protection of intellectual property. Prior to 1962, there were no specific laws as regards copyright in the Pakistan or East Pakistan (later Bangladesh). At that time different laws (the Code of Civil Procedure, 1908, Penal Code, 1860 and Specific Relief Act, 1877) and the British copyright system were applicable in case of copyright enforcement. In 1962, a copyright Ordinance amalgamating the different copyright laws which were existed at that time, was promulgated, namely, the Copyright Ordinance of 1962. This Ordinance was administered up to 1999. After that, a new law containing different provisions in the line of International standard was enacted in 2000, namely, the Copyright Act, 2000 (No 28 of 2000) and it was amended up to 2005. The Act (amended in 2005) contains, among others, the subject-matters of the TRIPS agreement in respect of copyright and related rights, computer programmers, database, cinema, broadcasting rights, performer's rights, phonograms rights etc. Bangladesh has been extending co-operation with the World Trade Organization (WTO), World Intellectual Property Organization (WIPO) and UNESCO for enriching her copyright system.⁵ In Bangladesh the bases of present copyright protection are as follows:

- The Copyright Act, 2000 (herein referred to as the 2000 Act).
- The Copyright Rules, 2006.
- The Berne Convention for the Protection of Literary and Artistic Works, 1886 as revised up to 1971 since May 4, 1999.

⁴ Kumar Narender, "University Libraries and Copyright Laws" (2009), downloaded from crl.du.ac.in/ical09/papers/index_files/ical-69_248_718_1_RV.pdf

⁵ Hossain, Md. Milan, "Present Situation of Copyright Protection in Bangladesh" (2012), Bangladesh Research Publications Journal, Volume: 7, Issue: 2, Page: 99-109, ISSN: 1998-2003.

- The Agreement on Trade-Related Aspects of intellectual Property Rights (herein referred to as TRIPS Agreement), 1994 since January 1995.

Copyright law protects only the form of expression of ideas, not the ideas themselves. It protects the owner of property rights against those who copy or otherwise take and use the form in which the original work was expressed by the author. The law may state that the author of an original work has the right to prevent other persons from copying or otherwise using his work. So a created work is considered protected as soon as it exists and a public register of copyright protected works is not necessary. Unauthorized copy, reproduction or use of copyright raises the question of infringement. In order to ensure exclusive right to the owner of a work, there must have certain provisions as regards infringement. Which acts create infringement if it is well defined by law; it will be easy on part of the owner to take action against the wrongdoer and thus protects the rights and interests of the owner. The present law of copyright also ensures protection by inserting the provisions of infringement. Copyright in a work is deemed to be infringed:⁶

When any person, without a license from the owner of the copyright, or the Registrar of the copyright, or in contravention of the conditions of a license granted or any conditions imposed by a competent authority under Act: (i) does anything, the exclusive right to do which is conferred upon the owner of the copyright; or (ii) permits for profit any place to be used for communicating the work to the public where such communication constitute an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright. Copyright infringement may also arise if any person does any of the following acts⁷:

- makes for sale or hire, or sells or lets hire or by way of trade displays or offers for sale or hire any infringing copies of the work or
- distributes, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, any infringing copies of the work, or
- exhibits to public by way of trade any infringing copies of the work, or
- imports into Bangladesh any infringing copies of the work.

⁶ Section 71 of Copyright Act, 2000.

⁷ *Ibid.*

Copyright exception

The present copyright law at the same time provides certain cases where no infringement can arise.⁸ Several exceptions are as follows: (a) Fair use of a literary, dramatic, musical or artistic work for the purpose of private study or private use including research; or criticism or review; (b) Fair use of a literary, dramatic, musical or artistic work for the purpose of reporting current events in a newspaper, magazine, or similar periodical or in a cinematograph film or by means of photograph; (c) Reproduction for use in judicial proceedings and for use of members of the legislature etc.

Piracy is considered to be the illegitimate use of materials held by copyright.⁹ The unauthorized copying or reproduction of copyright materials for commercial purposes and the unauthorized commercial dealing in copied materials is treated as copyright piracy. It affects all of the elements involved in the creation, production and distribution of intellectual works together constitute copyright system.¹⁰ Piracy primarily targets software, film and music. However, the illegal copying of books and other text works remains common, especially for educational reasons. The Pirated copies usually sold at reduced prices, thereby undermining the original author's and investor's possibility of obtaining a just moral and economic reward for their work and investment and thus the author's and investor's lose their interest in creation new literary, dramatic or artistic work. Copyright piracy is a great problem in Bangladesh. Here its rate is the highest amongst the world.¹¹ Most of the people do not realize that the copyright of a work (literary, artistic or dramatic) belongs to the creators; not to them; if they copy it without authorization, it constitutes an infringement or an offense.

Remedies for Copyright Violation

In Bangladesh in compliance with the provisions of TRIPS Agreement, there are three kinds of remedies against infringement and piracy of copyright, namely:

⁸ Section 72 of Copyright Act, 2000.

⁹ Owen, Lynette (2001) Piracy Association of Learned and Professional Society Publishers 14(1) p. 67.

¹⁰ WIPO (1988), Background Reading Material on Intellectual Property, WIPO Publication No. 659(E) p. 288.

¹¹ International Intellectual Property Alliance (IIPA) 2009 Special Report on Copyright Protection and Enforcement.

1. Civil remedies: The owner of the copyright can bring civil action in which relieves such as Anton Pillar Order¹² or (Search Order) injunction, accounts and damages can be sought.¹³ A suit or other civil proceedings relating to infringement of copyright is to be filed in the Court of District Judge,¹⁴ within whose 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 Civil suits provides remedy for claiming compensation for infringement of copyright and loss of profits as well. Anton Pillar Order is very essential to prove the infringement. As a result the copyright office, in collaboration with custom authorities can inspect any vehicle, ship, air-craft, dock or premises on the basis or a complaint lodged by the owner of a copyright or his duly authorized agent and can take action to prevent importation of illegal copies.
2. The present Act provides criminal remedies under above circumstances for the imprisonment of the accused or imposition of fine or both, seizure of infringing copies etc in the following ways:

Firstly: 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/-.¹⁵

Secondly: The Act provides for seizure of infringing copies and confiscation of all duplicating equipment used for manufacturing counterfeit copies.¹⁶ However, if the Court of Session is satisfied that infringement is committed without having an intention for profit or non-commercial purpose, the court may give lesser punishment, which may be imprisonment for less than six months and fine for less than 50,000 taka.

Thirdly: In case of piracy of computer programs, the amount of fine is extended by an amendment to the Copyright Act on May 18, 2005, which is now minimum Tk.1,00,000 and maximum Tk.4,00,000, if it is committed for commercial purpose.¹⁷ However, in case of mere use

¹² Anton Pillar Order is in nature of interlocutory remedy which would allow a victim of copyright infringements to enter the premises of the infringer and seize the infringed articles including instruments of infringement. This remedy was first given to a British case- *Anton Piller v. Manufacturing Process*.

¹³ Section 76 of the Copyright Act, 2000.

¹⁴ Section 81 of the Copyright Act, 2000.

¹⁵ Section 82 of the Copyright Act, 2000.

¹⁶ Section 93 of the Copyright Act, 2000.

¹⁷ Section 84 of the Copyright Act, 2000.

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: Administrative remedies consist of moving 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. Counterfeit/ pirated goods, can, if it is proved by the court as an act of infringement, be destroyed by the administrative authority.

Copyright Material and Library

Libraries are the key intermediaries in providing information to the users and the librarians, are the managers to provide different types of information resources through different channels. Information could be categorized as published, un-published, print and non-print works. As a facilitator, the librarian has connected to authors, publishers, aggregators, distributors, vendors, and users and so on. The toughest task for librarian is to balance copyright and use of copyrighted material within the purview of laws. The librarian can ensure the reputation of organization and may avoid misuse of copyrighted material by its stakeholders by creating awareness about copyright laws. As per the law the person who has infringed the material is solely held responsible for his act. Violating copyright laws would lead to legal disputes between Copyright holder, publisher, distributor, vendor, aggregator and user or stakeholder of concerned institution. Utmost care should be taken during subscription and its agreements with regard to any kind of electronic resource procurement, and better to consult legal expert during the process. Librarian need to ensure protection of copyrights while providing library access to public.¹⁸ Library is the key place for copyright violation process. However, there are a few exceptions to the Copyright laws. They are:

1. **Libraries and archives:** Libraries and archives are permitted to make up to three copies of unpublished copyrighted works for the purposes of preservation, security or for deposit for research use in another library or archive. Libraries can also make up to three copies of a published work to replace a work in their collection if it is damaged, deteriorated or lost, or the format of which has become obsolete.

¹⁸ N M Anjaneya Reddy and Aswath Lalitha, "Understanding Copyright Laws: Infringement, Protection and Exceptions" (2016), International Journal of Research in Library Science, Volume2, Issue 1 (January-June) 2016, 48-53. ISSN: 2455-104X

2. **Fair use:** The definition of the term ‘Fair Use’ needs to be explained in the light of the following facts: a. It should be used for non-profit educational purpose, not for commercial purpose; b. Nature of the copyright work; c. Whether the whole work has been copied or small part of the work is copied.
3. **Disposition:** The matter of disposition of a particular copy of a copyright is limited by the first sale doctrine, according to which the owner of that particular copy of the work may sell or transfer that copy. Libraries lending and marketing of used books are governed by the first sale doctrine.

Reasons for violating copyright laws

Violation of copyright law may differ from case to case, the reasons might be lack of resources, unavailability or inadequate copies, out of print/stock, lack of awareness about law and so on and so forth. To know the reasons for copyright violations and as a part of research, the survey had been conducted in the Cox’s Bazar district in Bangladesh among academic library professionals. The respondents of this survey were library professionals from Universities and colleges such as Medical, Engineering, and regular Degree. For the survey questionnaire 200 questionnaires were distributed, all the respondents were responded and reasoned as mentioned in the following table. According to the survey, the opinions have been scattered in an academic environment among professionals with regard to violation or infringement of copyright. Below table reveals that majority of the respondents have no idea on plagiarism (22%), because of high cost of original material they generally used pirated copies (20%), not enough understanding on copyright provisions (16%), unavailability of sufficient quantity of books in library (12%) and unavailability of resources (12%) etc. are the common or main reasons for violating copyrights.

	Reason 1	Reason 2	Reason 3	Reason 4	Reason 5	Reason 6	Reason 7
Details	Cost of the material	Unavailability of resources (out of print, out of stock etc.)	Unavailability of sufficient quantity/ Copy	Misconception of fair use	Copyright provisions not clearly understood	lack of trained and skilled people	No Idea on idea plagiarism
Percentage	20%	12%	12%	10%	16%	8%	22%

Findings

1. Copyright Violation is a very regular affair in Bangladesh and copyright violation in academic activities increasing day by day.
2. A large number of people, especially students are using pirated books to save their money and huge number of people has misconception of fair use.
3. Copyright provisions are not clearly understood by massive segment of the academic and library related personalities. However, the present copyright law of Bangladesh is not formulated to protect the best interests of libraries and archives.
4. Lack of academic resources, such as; books, articles, journals and other internet related resources in educational institution.
5. Teachers and students have inadequate knowledge on “Plagiarism”. On the other hand, lack of skilled people in academic libraries in Bangladesh.
6. Ineffective activities of copyright board and department of copyright in Bangladesh.
7. Law enforcing agencies and law officials have poor knowledge and training on copyright issues.

Suggestions

1. Publishers of original books should need to fix a price where price of the book will be students friendly. However, Government should provide more funds for University Libraries to procure more books and to subscribe to electronic resources. Government should also encourage and support local publishers and authors to engage in textbook writing and publishing for the university level as is being done for the basic and senior high school levels. Currently, the majority of the textbooks used at the university level are foreign owned and published outside the country. If such textbooks could be published locally and subsidized by the government, students would have greater access and at affordable prices.
2. Educational institutions should take a closer look at the activities of the commercial photocopy operators on their campuses. They must be

properly registered with the concerned University and Copyright Board should ensure that photocopying activities are done in the most acceptable manner. The academic institutions should appoint a Copyright Service Librarian, who will keep librarians and other members of the institution community informed about new developments in copyright. The Copyright Service Librarian would also be responsible for sensitizing and orientating students on copyright matters.

3. Educational materials such as textbooks are still a major source of knowledge for developing countries such as Bangladesh; therefore, it is important for law makers to make laws that enable students to have greater access to these materials. For example, Copyright Act 2000, may include that “permitted use of protected copyright work by library and archive” should be extended to cover private tertiary institutions and universities that absorb a large number of students who could not find places in the country’s public tertiary institutions.
4. Librarians and their representative organizations should be involved in any future national debates on copyright and should be consulted when the laws on copyright are being discussed and revised. This way, they can articulate the concerns applicable in educational contexts and that of their users.
5. Educational and research institutions must convey the details of fair use of copyright or copyright exception to their stakeholders. Moreover, Plagiarism is an academic offence thus the practice of plagiarism should need to introduce in every school, colleges and universities so that students can understand the negative impact of plagiarism in their early academic stage as well as government should supply plagiarism related software free of cost to the universities.
6. Government should take necessary steps to amend current copyright law. The best interest of the libraries and archives should need to include in the current law. In addition, punishment process under the copyright law should need to increase for the violation of copyright. Proper training program on increasing knowledge of copyright issues for law enforcing agencies and law officials are needed to implement regularly.
7. Copyright board and copyright department of Bangladesh should implement their all function properly to prevent copyright violation. However a separate mobile force to prevent copyright as well as a

Court or tribunal can be established to mitigate copyright disputes strictly.

Conclusion

Currently copyright violation is in alarming situation, especially in the academic institution in Bangladesh. Authors, publishers, librarian, faculty members and students are engaging in infringement of copyright. However article 42 of the constitution of Bangladesh has guaranteed about right to property which includes intellectual property and copyright is a subject matter of intellectual property. Copyright Act, 2000 is the existing law regarding protection of copyright but it seems that the law is not up to date and it has inadequate provisions to dissolve copyright violation in academic libraries. It is also necessary for institutions to come out of their apathy towards government policy formulation and legislation in copyright matters. They should examine whether current legislations are sufficient to enable them to continue their mission of educating people or whether any amendments in laws are required to facilitate their task in the light of new technologies.

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