

Protection of Copyright and Accessing Education Materials at Low Prices: Finding a Sustainable Solution for Bangladesh

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1. Introduction

Copyright which secures the right of litterateurs and artists, becomes a barrier for the users in developing and least developed country (LDC) to access copyrighted works including education materials for its costs. To ease the barrier in accessing education materials in an LDC like Bangladesh where affordability is frequently an issue due to less than two percent government spending on education as a share of the gross domestic product and per capita income of about \$1856, copyrighted books either from local or foreign publishers are often photocopied cover to cover and sold at the book shops.¹ There are also books printed from materials found on the net or elsewhere without acknowledging the sources, or books translated from foreign authors whose works are published overseas – acknowledging sometimes the original authors, or sometimes claiming that the copyright vests in the translators themselves.² As a result, the photocopied versions of the copyrighted books or books copied and pasted or translated without the authorization of the original authors are sold at low prices. A student or reader finds such bookshops a desirable alternative to purchase exorbitant books produced either by local or foreign rightsholders. Thus, the practice of copying meets some local needs at affordable prices and also serves the profiteering interests of booksellers.

However, in order to offer copyright protection to literary and artistic works including books, journals and the likes, Bangladesh becomes a party to the relevant

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¹ M S Siddiqui, 'Copyright infringement: Bangladesh & India Perspective' *The Financial Express* (Dhaka, 07 September 2014) 6 <<http://www.thefinancialexpress-bd.com/2014/09/07/54732>> accessed 12 May 2020; 'Bangladesh: Ensuring Education for All Bangladeshis' (*The World Bank: What We Do*, 13 October 2016) <<https://www.worldbank.org/en/results/2016/10/07/ensuring-education-for-all-bangladeshis>> accessed 4 February 2021; 'GDP Per Capita (Current US\$) – Bangladesh' (*The World Bank: Data*) <<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=BD>> accessed 4 February 2021.

² *ibid.*

multilateral treaties like the Berne Convention for the Protection of Literary and Artistic Works 1886 (Berne Convention)³ and the World Trade Organization (WTO) Agreement on the Trade-Related Aspects of Intellectual Property Rights⁴ (TRIPS) and enacts the Copyright Act 2000⁵ in compliance with the country's treaty obligations. Under the treaties and the local legislation, the copyright, like any other form of intellectual property rights (IPRs), requires striking a balance between the interests of the right holders and users; thereby on one side, it provides rewards and incentives to the copyright holders, and on the other, it facilitates public access to the fruits of creativity and intelligence either at the expiry of the copyright protection when the work is available in the public domain⁶ or by allowing the reproduction right through the compulsory license or other exception clauses like fair use whereby the rightsholders' exclusivity is curtailed in favour of the users.⁷

Further, as a Berne and TRIPS complying nation, Bangladesh obliges to give due protection to all the copyrightable books irrespective of national boundaries.⁸ Having said that, the questions that arise are – is the use of copyrighted works by photocopy shops in Bangladesh covered by the educational exception clause under the local Copyright Act 2000? Does the use come within 'the purpose of instruction' under section 72(8) of the Copyright Act 2000? Should Bangladesh, in compliance with its international obligations for copyright and fulfilling its constitutional obligations to education, make a balance between offering protection to foreign copyright owners and meeting local users' needs to access education materials at low prices as a sustainable solution?

Given that low-priced books serve the student community of Bangladesh with affordability and convenience, it is frequently argued that Bangladesh as an LDC should enjoy a special and differential treatment regarding the copyright protection mechanism and thereby it should not give any copyright protection to the foreign books.⁹ It is also argued that owing to transitional arrangements pursuant to article 66

³ Berne Convention for the Protection of Industrial Property, 9 September 1886, 828 UNTS 221 [hereafter Berne Convention].

⁴ 'Agreement on Trade-Related Aspects of Intellectual Property Rights' (1994) 33(1) *International Legal Materials* 81 [hereafter TRIPS].

⁵ Copyright Act 2000 (Bangladesh) <<http://bdlaws.minlaw.gov.bd/act-details-846.html>> accessed 31 January 2021.

⁶ Edward Samuels, 'The Public Domain in Copyright Law' (1993) 41 *Journal of the Copyright Society* 137, 140.

⁷ Lawrence Liang, 'Exceptions and Limitations in Indian Copyright Law for Education: An Assessment' (2010) 3(2) *The Law and Development Review* 197, 200–10.

⁸ Haq Faruk Ahmed, 'Most of the Translated Books are Pirated' (in Bengali) *The Daily Jugantor* (Dhaka, 27 May 2016) 3,7 <<https://epaper.jugantor.com/2016/05/27/index.php>> accessed 20 March 2019.

⁹ Sourov Rahman and Mir Sabbir, 'Intellectual Property: Law Exists but It Is Not Effective' (in Bengali) *Shaptahik* (Dhaka, 8 August 2009) <http://www.shaptahik.com/v2/print_publication/index.php?DetailsId=607> accessed 18 June 2019.

of the TRIPS¹⁰, an LDC member like Bangladesh should not be required to apply the provisions of the TRIPS, other than articles 3, 4 and 5 that incorporate the right of priority, national treatment and most favoured nation principle¹¹ until 1 July 2034, or until such a date on which it ceases to be an LDC member, whichever date is earlier.¹² It is further argued that, due to affordability and importance for the right to education as a fundamental principle of state policy as enshrined in article 17 of the Constitution of Bangladesh¹³, the country should not enforce any copyright protection to foreign books for purposes of supplying cheaper books to students.¹⁴ It is again argued that since the country has not issued any executive order in the Official Gazette notification offering protection to foreign works under section 69 of the Copyright Act 2000,¹⁵ the copyright protection to foreign books is not applicable.¹⁶

In fact, the protection of copyright has always been perceived as an obstruction to access to educational materials since the copyright holders have the exclusive rights of reproduction and distribution of their works.¹⁷ As a result, there arises the challenge whether the protection of copyright for a lifetime and certain period after the life generates a proper balance between the interests of the creator and the user, and determine it in an optimum manner.¹⁸ The reason for the challenge is that the dissemination of knowledge cannot be watered down only because the copyright over a work has not yet ceased to exist.

¹⁰ TRIPS, art 66.

¹¹ Paul Goldstein, *International Copyright: Principles, Law, and Practice* (4th edn, Oxford University Press 2001) 102. (According to articles 3, 4 and 5 of the TRIPS, the national treatment requires to treat intellectual property rights equally irrespective of the country of origin, the right to priority requires to be accorded to intellectual property for which registration in different jurisdictions based on the first application and the most favoured nation principle requires not to discriminate between member nations unless some nation is made favoured by a treaty.)

¹² ‘WTO members agree to extend TRIPS transition period for LDCs until 1 July 2034’ (*World Trade Organization: News and Events*, 29 June 2021) <https://www.wto.org/english/news_e/news21_e/trip_30jun21_e.htm> accessed 3 July 2021; Mohammad Atique Rahman, ‘Extension of TRIPS Transition Period for the Least Developed Countries (LDCs): New Opportunities, New Challenges’ (2014) 18 (1&2) *Journal of International Affairs* 45.

¹³ Constitution of Bangladesh, art 17 (The Article reads as follows: ‘The state shall adopt effective measures for (i) establishing a uniform mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law; (b) relating education to the needs of the society and producing properly trained and motivated citizens to serve these needs; (c) removing illiteracy within such time as may be determined by law’).

¹⁴ See also Tyler T. Ochoa, ‘Copyright Protection for Works of Foreign Origin’ in Jan Klabbers and Mortimer Sellers (eds), *The Internationalization of Law and Legal Education* (Springer 2009) 167, 172.

¹⁵ Copyright Act 2000, s 69 (Bangladesh).

¹⁶ See also *Prashanth Ravula and Ors. v Lucintel LLC and Ors.* [2011] (C.M.A. No. 362 of 2011) [28].

¹⁷ L. Ray Patterson, ‘Copyright and the exclusive right of authors’ (1993) 1(1) *Journal of Intellectual Property Law* 1.

¹⁸ Ruth L. Okediji, ‘Sustainable Access to Copyrighted Digital Information Works in Developing Countries’ in K. E. Maskus, and J. H. Reichman (eds), *International Public Goods and Transfer of Technology under a Globalized IP Regime* (Cambridge University Press 2005) 149.

This research article explains the intricate relationship between the copyright law and education and finds out that ‘the rudimentary hurdle’ posed by copyright as depicted in writings of intellectual property scholars like James Boyle¹⁹ is the cost of learning materials compared to the affordability in developing countries and LDCs. It also tries to strike a balance between copyright protection and access to education materials in an LDC like Bangladesh. While outlining the periphery of copyright protection, this article considers the scenario of the Bangladeshi book shops. It largely suggests that a ‘fairness’ model for the copyright landscape of Bangladesh can promote access to education and learning. Finally, this article concludes by illuminating new strategies for accessing education materials at low prices.

2. Obligations under the Berne Convention 1886

Article 2 of the Berne Convention extends the copyright protection to all kinds of production in the literary, artistic and scientific field irrespective of the form or mode of expression.²⁰ Under the Convention ideas are not protected, however it is up to the member countries to require that the work be fixed in some particular material form before the protection may apply.²¹ Further, article 3 of the Convention requires two criteria regarding the eligibility for copyright protection. The first criteria to protect a work under the convention is nationality (personal criterion). The second one is publication of the work in one of the Berne member countries (geographical criterion).²² In addition, article 8 makes it clear that only the author owns the translation right throughout the term of protection of the rights in the original work.²³

Further, the author owns the reproduction right under article 9 of the Berne Convention. However, member countries are permitted to add legal exception without unreasonably prejudicing the legitimate interest of the authors.²⁴ To elaborate the legal exception, article 9(2) appears with the ‘three-step test’ where the first test requires the exception only for ‘certain special cases’ like utilization of work in

¹⁹ James Boyle, ‘A Politics of Intellectual Property: Environmentalism for the Net’ (1997) 47(1) *Duke Law Journal* 87.

²⁰ World Intellectual Property Organization, *WIPO Intellectual Property Handbook: Policy, Law and Use* (Vol. 489, WIPO 2004) 263.

²¹ Joan Infarinato, ‘Copyright Protection for Short-Lived Works of Art’ (1982) 51(1) *Fordham Law Review* 90.

²² Sam Ricketson, ‘The Birth of the Berne Union’ (1986-87) 11(1) *Columbia-VLA Journal of Law and Arts* 9. (Originally founded by the Volunteer Lawyers for the Arts, the Journal was until Volume 25 known as the Columbia-VLA Journal of Law & the Arts.)

²³ Susan Štrba, *International Copyright Law and Access to Education in Developing Countries: Exploring Multilateral Legal and Quasi-legal Solutions* (Vol. 10, Martinus Nijhoff Publishers 2012) 22.

²⁴ Berne Convention, art 9(2).

teaching, mostly for non-economic purpose. The second step requires that the exception would not ‘conflict with a normal exploitation of the work’ which means that a small portion of the work is utilized, not the whole work. Lastly, the third step lays down that the exception would not ‘unreasonably prejudice the legitimate interests of the author.’ It means that utilization of the work will not have an adverse impact on the potential market for the work.

In addition, article 10 permits to quote from publicly accessible works in so far as this inclusion is compatible with fair practice and justified by its purpose.²⁵ In that case, the extent of justification is to be determined by the state legislation. Further, article 10(2) recognises the fair use of copyrighted material i.e. a reasonable portion for teaching as legitimate.²⁶ Here teaching in educational institutions comes under the purview of this provision, mere scientific research does not, however, come within the scope.²⁷ Further, where copyrighted works are used pursuant to exceptions and limitations under the Berne, proper reference to the original source and names of authors requires to be made.²⁸ Importantly, the application of this Convention extends to all works which have not yet fallen into public domain.²⁹ Therefore, when a work falls into the public domain, it is freely accessible by any person.

3. Obligations under the TRIPS Agreement

Article 9 (1) of the TRIPS obliges its members to comply with the Berne Convention, specifically articles 1 through 21 and the appendix.³⁰ The significance of article 9(1) is that it makes the substantive provisions of the Berne Convention applicable to those WTO members who have not yet signed or ratified or acceded to the Convention.³¹ Significantly, article 13 permits member countries to add legal exception to exclusive rights of authors without unreasonably prejudicing their legitimate interest. This provision is the verbatim of provision laid down in article 9(2) of the Berne and both the provisions contain the identical criteria.³² However, the TRIPS provision contains a double-barrelled filter since the limitations on and exceptions to the exclusive rights of the copyright owners ‘cannot conflict with a

²⁵ Sam Ricketson and Jane C. Ginsburg, *International Copyright and Neighbouring Right: The Berne Convention and beyond* (Oxford University Press 2006) 786.

²⁶ Pierre N. Leval, ‘Toward a Fair Use Standard’ (1990) 103(5) *Harvard Law Review* 1105, 1110.

²⁷ Claude Masouyé and William Wallace, *Guide to the Berne Convention for the Protection of Literary Works (Paris Act, 1971)* (WIPO 1978) 60.

²⁸ Berne Convention, art 10(3).

²⁹ *ibid*, art 18.

³⁰ TRIPS, art 9(1).

³¹ Peter-Tobias Stoll, Jan Busche, and Katrin Arend, *WTO: Trade-related Aspects of Intellectual Property Rights* (BRILL 2009) 209.

³² *ibid* 279.

normal exploitation of the work' and 'must not unreasonably prejudice the legitimate interest of the authors'.³³ For example, reproduction of a small portion of a copyrighted material by a student or a teacher to elucidate a lesson does not prejudice the legitimate interest of the creator. It thus bears the greatest practical importance regarding maintaining a balance between the interests of copyright owners and public interests.

Further, article 41 obliges member countries to ensure that the available enforcement procedure under their law permits effective and expeditious action against acts of infringement.³⁴ However, the definition of 'effective' or 'expeditious' has been left to be interpreted within the local context.³⁵ In addition, article 41(2) requires that such enforcement procedures shall be fair and equitable and not unnecessarily complicated or costly.³⁶ Therefore, an absence of effective and expeditious enforcement procedure may constitute a violation of obligations under the Agreement. However, this requirement does not apply to LDC members because they are still in a transitional period and they need to create a viable technological base.

In addition, whereas article 70(1) provides for the principle of non-retroactivity³⁷ meaning that the TRIPS does not apply to acts which occurred before the adoption of the Agreement, article 70(2) obliges member countries to apply the TRIPS in the existing subject matter on the date of application of this Agreement. Moreover, the protection will be granted only if the existing work meets the criteria for protection on the date of application of this Agreement or later and the work complies with the provision of article 18 of the Berne Convention which means it has not yet fallen into the public domain at the expiry of the term of protection in the country of origin.

4. Obligations under the Copyright Act 2000

The copyright protection to literary and artistic works including books in Bangladesh is available only in accordance with the provisions of the Copyright Act 2000.³⁸

³³ Jerome H. Reichman, 'Universal Minimum Standards of Intellectual Property Protection under the TRIPS Component of the WTO Agreement' (1995) 29(2) *The International Lawyer* 345.

³⁴ Adrian Otten and Hannu Wager, 'Compliance with TRIPS: The Emerging World View' (1996) 29 *Vanderbilt Journal of Transnational Law* 391, 404.

³⁵ Molly Land, 'Rebalancing TRIPS' (2012) 33(3) *Michigan Journal of International Law* 433, 441; SK Verma, 'Enforcement of Intellectual Property Rights: TRIPS Procedure & India' (2004) 46(2) *Journal of The Indian Law Institute* 183.

³⁶ Christopher Heath and Thomas F Cotter, 'Comparative Overview and the TRIPS Enforcement Provisions' in Christopher Heath (ed), *Patent Enforcement Worldwide: Writings in Honour of Dieter Stauder* (3rd edn, Hart Publishing House 2015) 12.

³⁷ Justin Malbon, Charles Lawson, and Mark Davison, *The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights: A Commentary* (Edward Elgar Publishing 2014) 265; TRIPS, art. 70(1). It reads as follows: 'This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.'

³⁸ Copyright Act 2000, s 13 (Bangladesh).

According to the Act, the copyright protection exists only in ‘original works’ including literary, dramatic, musical or artistic works.³⁹ In addition, the Act protects foreign works subject to the provisions of sections 68 and 69 under which the government of Bangladesh will provide copyright protection to the foreign nationals by notification in the Official Gazette.

For the purposes of the Copyright Act, a literary work includes a work written or produced in a book form, which is of creative, research-oriented, informative and similar nature or of translated, converted, adapted, modified or compiled nature, or a programme produced by a computer intended for study and listening to the people in general.⁴⁰ Thus, education materials like textbooks, professional books (scientific, medical and technical), course packs and scholarly journals come within the contours of literary work’s definition. As a general provision, section 14 provides that copyright in case of a literary, dramatic, or musical work means the right to do or authorize the reproduction of the work in any form, making copies and distributing them, performing it in public, making translation of it, making any cinematograph film from this, broadcasting it, or making any adaptation of the work.

In cases where any work is withheld from the public e.g., due to unreasonable price, non-publication as per demand and necessity, section 50 of the Copyright Act mandates that compulsory licenses can be issued to republish the work and making it available to the public.⁴¹ Under the compulsory licensing, authorization is given to a third-party by the Registrar of Copyrights to reproduce and sell those copyrighted works to the public.⁴² In case of unpublished work due to author’s absence, any person may make an application under section 51 to the Copyright Board for a license to publish such work or a translation or adaptation thereof in any language.⁴³ After the expiry of 5 years from the first publication of the work, an application for license can be made under section 52 to the Copyright Board to produce and publish a translation or adaptation of a literary or dramatic work in any language for general use in Bangladesh. A license can also be granted for reproduction or translation of original works of foreign origin after the expiry of three years from the first publication of such work, but only for the purpose of promoting teaching, research, and scientific development etc.⁴⁴ Such foreign works and their translation can then be published in Bangladesh.⁴⁵

³⁹ Parameswaran Narayanan, *Intellectual Property Law* (3rd edn, Eastern Law House 2001) 256.

⁴⁰ Copyright Act 2000, s 2(46) (Bangladesh).

⁴¹ *ibid*, s 50.

⁴² *ibid*.

⁴³ *ibid*, s 51.

⁴⁴ *ibid*, s 52.

⁴⁵ *ibid*, s 52.

Further, whereas the permission of the copyright owner is not needed under the above-mentioned cases, sections 48-54 of the Copyright Act lay down the procedure of granting license for copyright and the payment of royalties to the owner.⁴⁶ In addition, section 71 provides a list of acts which can be regarded as infringement of copyright when any person does or permits anyone else to exploit any of the copyright owner's exclusive rights conferred upon by the Act without a license granted by the copyright owner or the Registrar of Copyrights under this Act. Moreover, section 71(b) provides that without the authorization of the copyright owner, reproducing the work, selling, or distributing it, exhibiting it in public by way of trade, and importing any 'infringing copy' into Bangladesh will fall under the purview of copyright infringement. In fact, by inserting provisions of infringement, the Copyright Act ensures protection of the work.⁴⁷

In addition, the Act sets forth several important exceptions to the copyright owner's rights, and the best-known exception is the fair use or fair dealing.⁴⁸ Under the fair use provision, a person can use the copyrighted material in a reasonable manner to do criticism, review etc. Further, under the Act, research or study, criticism or review, judicial proceedings, reporting of news, class instructions by a teacher are considered as a fair use of the copyrighted work.⁴⁹ For instance, reproducing a copyrighted material in the course of instructions or while formulating question papers is permitted under the Act. Therefore, it seems that instructions or lectures given by a teacher and for the purpose of answering questions in examination, copyrighted works can be used. This provision has formed the philosophical basis for promoting the public interest in access to copyrighted works and limiting exclusive rights of the copyright holders. Hence on one hand, the Copyright Act provides sufficient protection to promote creative expressions and returns in this field. On the other hand, the Act ensures that the strengthening of the copyright framework should not result in excluding the public from the enjoyment of works.

On the issue of foreign works' copyright, there arises a debate whether foreign works will receive automatic copyright protection in Bangladesh. Regarding this matter, it is argued that Bangladesh as an LDC should enjoy a special and differential treatment regarding the copyright protection mechanism during the TRIPS transition period and thereby it would not be required to give any copyright protection to the foreign books.⁵⁰ To the counter, it is argued that as a Berne and TRIPS complying nation, it should give protection to all the copyrightable books irrespective of the

⁴⁶ Md. Milan Hossain, 'Present Situation of Copyright Protection in Bangladesh' (2012) 7(2) *Bangladesh Research Publications Journal* 99.

⁴⁷ Copyright Act 2000, s 71 (Bangladesh).

⁴⁸ *ibid*, s 72.

⁴⁹ *ibid*.

⁵⁰ Rahman and Sabbir (n 10).

national boundaries as long as the requirements like fixation, originality etc. are made.⁵¹ In fact, to offer copyright to foreign works, section 69 envisages that by way of notification in the Official Gazette, the Government of Bangladesh will provide copyright protection to foreign works in the following works:

- (a) Work is first published in a foreign country
- (b) In case of unpublished works, the author is a citizen of a foreign country or domiciled there.
- (c) In case of any work, the author, on the date of the first publication, was a subject or citizen of a foreign country.

However, this provision is subject to a proviso requiring that foreign country to provide copyright protection to Bangladeshi nationals in their territory.⁵²

5. New Strategies Needed: A Search for Accessing Cheaper Education Materials in Bangladesh

Bangladesh, as an LDC member, is enjoying the TRIPS flexibilities under ‘transition period’ for not complying with the TRIPS other than its articles 3,4 and 5 until 1 July 2034 or until it ceases to be an LDC member.⁵³ However, Bangladesh has recently entered the first phase to graduate from the status of LDC.⁵⁴ To this end, the United Nations (UN) shall watch the improvements till 2021 in the three criteria which include the economic vulnerability index (EVI), the human assets index (HAI), and per capita gross national income (GNI) based on which the development status is determined.⁵⁵ If every criteria goes in line, the UN will make a formal announcement in 2024 for the country's graduation to the status of developing country.⁵⁶ However, due to formalities including reviewing, monitoring, notification etc., it will not

⁵¹ Jakir Hosen, ‘For Copying Books, there will be Imprisonment and Compensation’ (in Bengali) (*Ntvbd online: Ain-Kanun*, 17 February 2015) <<https://ntvbd.com/law-and-order/1740>> accessed 17 June 2019; Ahmed (n 8); Staff Correspondent, ‘Pirating Books of Bangabandhu, 4 Sentenced to Jail and Fined’ *Daily-Bangladesesh.com* (Dhaka, 07 November 2020) <<https://www.daily-bangladesh.com/english/Pirating-books-of-Bangabandhu-4-sentenced-to-jail-and-fined/53062>> accessed 25 January 2021.

⁵² Copyright Act 2000, s 69 (proviso) (Bangladesh).

⁵³ TRIPS, ‘WTO members agree to extend TRIPS transition period for LDCs until 1 July 2034’ (*World Trade Organization: News and Events*, 29 June 2021) <https://www.wto.org/english/news_e/news21_e/trip_30jun21_e.htm> accessed 03 July 2021.

⁵⁴ Law Talk, ‘IP Means Creation of Mankind’ *The Daily Observer* (Dhaka, Law and Justice, 26 April 2018) <https://www.observerd.com/details.php?id=134638&fb_comment_id=1688748117912202_1689747317812282> accessed 28 March 2019.

⁵⁵ LDC Watch, ‘Criteria for LDCs’ <<https://www.ldcwatch.org/index.php/about-ldcs/criteria-for-ldcs>> accessed 20 January 2021.

⁵⁶ ‘Bangladesh, UN Consider Expected LDC Graduation in 2024’ (*IISD:SDG Knowledge Hub*, 18 December 2018) <<https://sdg.iisd.org/news/bangladesh-un-consider-expected-ldc-graduation-in-2024/>> accessed 20 January 2021.

practically be possible before 2027 for the country to reap the developing country benefits of being ‘more positively viewed by international investors, leading to increased access to international private finance for both public and private sectors’, achieving ‘stronger position in international negotiation, especially in the Asian Development Bank, United Nation, World Bank, WTO frameworks’⁵⁷ or having special rights called “special and differential treatment” to increase trading opportunities, build the capacity to carry out the WTO work, handle disputes, and implement technical standards or longer transition periods in complying with treaty provisions etc. as inserted in some WTO Agreements.⁵⁸ Therefore, considering the status quo of Bangladesh as it stands now and post compliance with the TRIPS, it is essential to search some new strategies and sustainable solutions to provide the student community affordable access to education materials.

5.1 Clarifying the Dilemma Surrounding Foreign Works’ Copyright

Copyright laws in Bangladesh and elsewhere begin with the principle that copyright is not about copying – it is about balancing the rights of copyright holders and the public interest.⁵⁹ This point has been accentuated in the notion of limited property right as well as by the judicial pronouncements. For example, in the *Donaldson v Becket*⁶⁰ case it was held that copyright in published works does not exist for ever but has to go through statutory limits. The challenge that is often faced in Bangladesh whether the copyright in foreign works would receive automatic protection and whether it would be subject to legal boundaries. As a matter of fact, Bangladesh cannot get away from offering copyright protection to foreign works which are generally expensive and unaffordable for people in Bangladesh. And to ensure accessibility for its students an LDC like Bangladesh can set some protection requirements and technical rules in consideration of its transition benefits and people’s affordability as is done in other jurisdictions. For example, in India, foreign

⁵⁷ Mana Southichack, ‘LDC Status Graduation: The Ways Forward for LAO PDR’ (2017) (Regional Capacity Building Workshop Formulating National Policies and Strategies in Preparation for Graduation from the LDC Category, Thimphu, Bhutan 14-16 November 2017). <<https://www.unescap.org/sites/default/files/Lao%20PDR%20LDC%20Graduation%20PPT-revised-MSouthichack.pdf>> accessed 2 February 2021.

⁵⁸ Trade and Development Committee, ‘Special and Differential Treatment Provisions’ (2013) (*World Trade Organization: Trade Topics*) <https://www.wto.org/english/tratop_e/dev_e/dev_special_differential_provisions_e.htm#legal_provisions> accessed 2 February 2021.

⁵⁹ <See generally, Mohammad Towhidul Islam, ‘Protection of Public Interests through a Human Rights Framework in the TRIPS Agreement: Realities and Challenges’ (2009) 4(8) *Journal of Intellectual Property Law & Practice* 573, 574 (the author succinctly puts that “the monopolization of IP rights and restricting the comparative advantage of imitation and adaptation appear as a blockade to fulfil the developmental needs of IP rights using developing and LDCs in agriculture, health, biodiversity, economic development, and others”)>

⁶⁰ *Donaldson v Becket* [1774] 4 Burr. 2408.

works are accorded protection subject to the fulfilment of formalities like availability of the works, variable formats including e-prints, or the foreign country must grant similar protection to works entitled to the Indian copyrightable works⁶¹ as prescribed by the International Copyright Order 1999.⁶²

In similar line, the Copyright Act in Bangladesh also requires that the foreign works will get copyright protection provided the country of that foreign national grants copyright protection to Bangladeshi nationals in their territory.⁶³ However, the Government is yet to issue an order in the Gazette offering protection to foreign works. So, it appears that foreign works are not automatically protected in Bangladesh under the Copyright Act. This may be considered as a technical rule but other formalities like availability of the works in cheaper rates, variable formats including e-prints can be inserted in laws which can be used as a witting way-out for accessing particularly high priced foreign educational materials as it happens now.

Further, despite the technical ambiguity in offering copyright protection to foreign works, section 93 of the Copyright Act empowers police officers with the authority to launch raids against pirated books – whether of local or foreign origin and seize the same.⁶⁴ Even in 2007, a task force was formed under the Ministry of Cultural Affairs⁶⁵ in order to tackle piracy which is rampant in the country as also reported by the International Intellectual Property Alliance based in the United States.⁶⁶ Till then, members of the task force have launched couple of raids in Dhaka and seized a lot of pirated books written by foreign authors.⁶⁷ The National Innovation and Intellectual Property Policy 2018⁶⁸ in its Goal no. 5, strategy 8 also mentions that the task force needs to be strengthened to address violation of

⁶¹ Narayanan (n 39) 361.

⁶² Swetha Logachandru, 'International Copyrights under Copyright Act, 1957: Everything You Need to Know' (*Law CIRCA: Law Articles*, 21 December 2020 <<https://lawcirca.com/international-copyrights-under-copyright-act-1957-everything-you-need-to-know/>> accessed 30 January 2021).

⁶³ Copyright Act 2000, s 69 (proviso) (Bangladesh).

⁶⁴ *ibid*, s 93.

⁶⁵ Staff Correspondent, 'Task Force to Stop Vulgar Films, Video Piracy' *The Daily Star* (Dhaka, 03 October 2007) <<https://www.thedailystar.net/news-detail-6471>> accessed 25 January 2021.

⁶⁶ International Intellectual Property Alliance (IIPA), *Report on Copyright Protection and Enforcement* (IIPA 2018). (2009) Special 301: Bangladesh 17 February 2009, 369, 373

⁶⁷ Staff Correspondent, '5000 Pirated Textbooks Seized at Bangla Bazar' *The Daily Star* (Dhaka, 26 February 2008) <<https://www.thedailystar.net/news-detail-25058>> accessed 23 March 2019; Staff Correspondent, 'Huge Pirated Books Seized, 9 Held' *The Daily Star* Dhaka, 23 September 2010) <<https://www.thedailystar.net/news-detail-155590>> accessed 23 March 2019; Jannatul Ferdus, 'Shahriar Conducts Drive in Book Market' *Overtime.Bd* (Dhaka, 26 June 2019) <<https://www.overtimebd.com/beta/2019/06/26/shahriar-conducts-drive-in-book-market>> accessed 27 June 2019.

⁶⁸ National Innovation and Intellectual Property Policy 2018 (hereafter National IP Policy) <<https://dpdt.portal.gov.bd/site/page/e99a643b-6362-4717-b707-237baa4724af/>> accessed 7 September 2020.

intellectual property rights since the existing task force lacks sufficient and qualified manpower in order to launch raids outside Dhaka. Thus, the Government of Bangladesh provides protection to the foreign works in a limited scale.

5.2 Balancing Competing Interests by the Parliament or the Court

The right to education, as envisioned as a Fundamental Principle of State Policy under article 17 of the Constitution of Bangladesh⁶⁹, might also be viewed as characteristic augmentation of the scope of the right to life. The Supreme Court of Bangladesh, by interpreting the right to life as a subjective concept as under article 32 of the Constitution, has ensured that any aspect supposably including education through which the life is enjoyed, falls under the wider ambit of article 32 regarding right to life.⁷⁰ Therefore, the country is under a constitutional obligation to facilitate free and compulsory education as a fundamental right of the people.⁷¹

Further, the Parliament can also legislate, or the Court can interpret treaty obligations and laws balancing competing interests regarding copyright and educational needs. Several countries have endorsed the notion of fair dealing/use for copyright in their national legislation taking into consideration the socio-economic conditions of each country. For example, the Supreme Court of the United States in the case of *Cambridge University Press v Becker*⁷² highlighted that reproduction averaging around 10% of the whole copyrighted work does not constitute infringement. If the United States with such a strong economy can give such a considerable latitude to its people under the fair use regime, it turns out to be fairly simple for the legislators of Bangladesh to amend section 72 with a specific end goal to unwind the restrictions. For example, a provision can be inserted in the Copyright Act mentioning that reproduction almost about 25% of the copyright protected material for the purpose of education falls under the periphery of fair use. Eventually, the outcome would be a piece of legislation ready to face one of the challenges in the education sector that is the cost of reading materials.

⁶⁹ Constitution of Bangladesh, art 17.

⁷⁰ *Ain O Salish Kendra v Bangladesh* [1999] BLD 488 (The court opined that when rootless people have been taken shelter in slums (basti) and somehow making a livelihood, their wholesale eviction without any scheme of their rehabilitation has been found to offend the right to life); and see also *Advocate Zulhasuddin v Bangladesh* [2010] BLD 1 (the High Court Division held that 'The imposition of VAT on receipts of medical and dental treatment, pathological laboratory and diagnostics centre & fees of specialists doctor is ultra vires of right to life').

⁷¹ Mohammad Badruzzaman and Md. Nannu Mian, 'Right to Education in Bangladesh: An Appraisal for Constitutional Guarantee' (2015) 13 *Journal of Studies in Social Sciences* 1.

⁷² *Cambridge University Press v Becker* [2012] Civil Action No. 1:08-CV-1425-ODE.

5.3 Reprinting and Translation of Books by LDC at Low Cost

Since the cost of textbooks and learning resources is particularly high in developing countries and LDCs with respect to their per capita income, there should be control on variables like market forces and competition that decide the cost of a book. For instance, let us assume that the cost of a book in Bangladesh typically comprises of direct expenses like paper and ink at 35%, labour expense at 10%, distribution expenses at 40% and royalty at 15%. Such expenses would be much lower if the books were copied or reproduced under the expanded compulsory licensing schemes and disseminated in Bangladesh as opposed to being them imported. That is why, Johnson opined that ‘the high production costs of scientific and technical books standing in the way of their dissemination in developing countries could be substantially reduced if the advanced countries would freely allow their books to be reprinted and translated by underdeveloped countries.’⁷³

5.4 Establishing Used Book Markets

The sale of used books or second-hand books does not amount to copyright infringement. In a used book market, anyone can resell his or her books without violating the copyright law. The rationale underlying this is the doctrine of first sale, wherein after the first sale of a book, the copyright owners cannot control the resale or redistribution of their books. Consequently, the purchaser of a copyrighted book can sell or otherwise dispose of that book without committing any copyright infringement. Therefore, copying or reproducing a book is illegal, not reselling it.

The doctrine of first sale is enshrined in section 14(1)(1)(b) of the Copyright Act 2000 which grants the copyright owner with the exclusive right ‘to issue copies of the work in public, not being copies already in circulation’. Here a copy ‘already in circulation’ means a copy that is already in circulation within the four corners of Bangladesh since the Copyright Act 2000 extends only within the territory of Bangladesh.⁷⁴ For example, if X purchases a book from Z and resells it within Bangladesh, it will fall under the purview of the doctrine of first sale meaning it will make the resale justified. So ‘after first sale’, the buyer ‘is not restricted by the statute from further transfers of that copy’.⁷⁵

Further, second hand or used book markets can help with market segmentation by providing access to expensive education materials at low prices.⁷⁶ However, some scholars argue that copyright holders are not adequately rewarded because of this

⁷³ Charles F. Johnson, ‘The Origins of the Stockholm Protocol’ (1970-71) 18 *Journal of the Copyright Society of the USA* 91.

⁷⁴ Copyright Act 2000, s 1(2) (Bangladesh).

⁷⁵ Pranesh Prakash, ‘Exhaustion: Imports, Exports and the Doctrine of First Sale in Indian Copyright Law’ (2011) 1 *Manupatra Intellectual Property Reports* (MIPR) 149; see also *United States v Wise* [1977] 550 F.2d 1180, 1187 (9th Cir. 1977).

⁷⁶ Peter K. Yu, ‘The Copyright Divide’ (2003) 25 *Cardozo Law Review* 331.

resale of their work. They also argue by taking support from the Lockean compensatory justice argument that authors are naturally owners of their fruits (works i.e. books) and no one can snatch away those fruits without their authorization.⁷⁷ One might equally well argue that copyright owners realize the full value of their work from the first sale and therefore, should not be permitted to profit repeatedly by controlling a further sale or other transfer of the work.⁷⁸ Additionally, second hand books never had much impact on new books' prices.⁷⁹ Therefore, the question of 'accessibility' and 'affordability' can be resolved by establishing second hand book stores.

5.5 Production of Low-Priced Editions

To meet the needs of the developing countries and LDCs, low priced edition books can effectively be produced.⁸⁰ Under 'publishing agreements' (i.e., a license agreement) with the foreign publishers, textbooks can legally be printed in Bangladesh to fill up the vacuum of affordable books. Even in our neighbouring country 'India', under the copyright arrangements with the Penguin Books, the Indian publishers bring the print and eBook version of the books at low prices. In the case of *Penguin Books Ltd. v India Book Distributors and Others*⁸¹, the court ruled that '[i]mportation of foreign books is possible if there is a licensing arrangement between the national publisher and foreign publisher'. Hereby the Bangladeshi companies can, utilizing tax concessions and cheap labour, publish books in lighter, cheaper and lower quality paperback editions, and sell them at much lower rates wherein the price differentials can be as low as 10 percent of the cost of the same book from abroad. However, 'threat of exports' is unfortunately a major concern in producing low priced edition books as they can be exported back to the country of origin where they were expensive.⁸² For example, a British publisher 'R' can grant reprint rights to a

⁷⁷ Michael J Trebilcock and Robert Howse, *The Regulation of International Trade* (Routledge 2005) 396-400; see also Mohammad Towhidul Islam, 'Implications of the TRIPS Agreement in Bangladesh: Prospects and Concerns' (2009) 6 *Macquarie Journal of Business Law* 1, 4.

⁷⁸ Goldstein (n 11) 107.

⁷⁹ See Anindya Ghose, Michael D. Smith, Rahul Telang, 'Internet Exchanges for Used Books: An Empirical Analysis of Product Cannibalization and Welfare Impact' (2006) 17(1) *Information Systems Research* 1, 3-19 (arguing that only 16% of Amazon's used book sales displaced new book sales. These estimates are almost certainly out-of-date given continuing improvements in on-line markets and the rise of eBooks whose quality is literally indistinguishable from new texts.); see also Michael D. Smith & Rahul Telang, 'Internet Exchanges for Used Digital Goods: Empirical Analysis and Managerial Implications' (2008) Working paper, Carnegie Mellon University (remarking that eBooks have much larger cross- elasticities than physical used books).

⁸⁰ John O'Neil, 'Getting Textbooks Cheaper from India' *The New York Times* (New York, 19 March 2006) <<https://www.nytimes.com/2006/03/29/education/29textbooks.html>> accessed 02 May 2020.

⁸¹ *Penguin Books Ltd. v India Book Distributors and Others* [1984] AIR 1985 Delhi 29, 26 (1984) DLT 316.

⁸² Shamnad Basheer and others, 'Exhausting Copyrights and Promoting Access to Education: An Empirical Take' (2012) 17 *Journal of Intellectual Property Rights* 335, 342.

Bangladeshi publisher ‘B’ under the low-priced editions arrangement. Consequently, it is possible that B or someone else will export those low-priced books under the parallel importation scheme of exhaustion to Britain where those books are priced at exorbitant rates. Therefore, a licensing agreement between the Bangladeshi publishers and foreign publishers is necessary to restrict the sale of those books within Bangladesh only. So, in terms of ‘accessibility’ and ‘pricing’, low priced edition books can become a sustainable solution for Bangladesh.

5.6 Introduction of a New International legal Instrument to Meet the Needs of Developing and Least- Developed Countries

Given that the copyright standards outlined by the Berne Convention has placed the low per capita income countries at a significant disadvantage, its appendix⁸³ to the 1971 Paris Act of the Berne Convention offers some special flexibilities open to all developing countries concerning translation and reproduction of works of foreign origin. The appendix allows developing countries to issue compulsory licenses for translating works of foreign origin into languages of general use in their territories⁸⁴, and reproducing published copyrighted works with systematic instructional activities.⁸⁵ In the meantime, Bangladesh has availed of the flexibilities provided by articles II and III of the said appendix which became effective from 5 December 2014, until 10 October 2024.⁸⁶ However, the appendix seems to have failed to meet the needs of developing countries.

In Bangladesh, for example, the draft Copyright Act 2020⁸⁷ tries to respond to the education needs by providing that any person can obtain compulsory license from the Copyright Board for using copyrighted works⁸⁸. However, those provisions seem to have been narrowed down by the so called three-step test of special cases, not conflicting with normal exploitation and prejudicing author’s legitimate interests⁸⁹ as provided by the Berne. For instance, if there is a provision that there will be limitations on quantity and quality of the copies of the work, it suggests that a full book cannot be copied altogether. Thus, the purpose of the appendix to disseminate knowledge in developing countries has been diluted.

⁸³ Berne Contention for the Protection of literary and Artistic Works: Basic Rules and special Rules for Developing Countries 1971 (WIPO/GIC/CNR/GE/86/4) [hereinafter the Paris Act 1971].

⁸⁴ Appendix to the Paris Act 1971 (n 51), art II.

⁸⁵ *ibid*, art III.

⁸⁶ Berne Notification No. 269, ‘Declaration by the People’s Republic of Bangladesh’ (World Intellectual Property Organization, 05 September 2014) <http://www.wipo.int/treaties/en/notifications/berne/treaty_berne_269.html> accessed 12 May 2018.

⁸⁷ Draft Copyright Act 2020 [On file with the author].

⁸⁸ *ibid*, ss 50-56.

⁸⁹ Berne Convention, art 13 [explaining that copyright exceptions must be (1) limited to special cases, (2) do not conflict with normal exploitation of the work, and (3) do not unreasonably prejudice the legitimate interests of the author].

Further, like the provision of article 31bis of the TRIPS that allows WTO members to grant special compulsory licences exclusively for the production and export of affordable generic medicines to other members that cannot domestically produce the needed medicines in sufficient quantities for their patients, article 13 of the Berne can be amended by inserting article 13bis to allow developing countries and LDCs under compulsory license to reproduce and supply the copyrighted works subject to the condition that right holders receive fair compensation consistent with royalty standards in respecting countries. This means that this new legal instrument will drastically reduce the cost of education materials in developing countries and LDCs and will be an effective solution in ensuring access to affordable education materials.

5.7 A 'Fairness' Model for Copyright and Access to Education: A Way out for Bangladesh

The doctrine of 'fair use' or 'fair dealing' permits certain limited uses of copyright-protected works without the permission of the copyright owner. For instance, reproduction of copyright protected works for the purpose of teaching, scholarship or research comes within the purview of fair use as it does not prejudice author's interests. As socio-economic conditions vary across different countries, any 'fair dealing' provision in the national copyright law should be tailored to the needs of that country. Given the reality of economic asymmetry of the developing countries and LDCs, they should be given the choice to formulate their own 'fairness' model for copyright which will serve the best interests for their people. Unfortunately, in most of the cases, being the users and not the publishers of the books, most of the people from LDCs like Bangladesh cannot afford to buy the high-priced books like their developed world counterparts.⁹⁰ To allow access to its people, Bangladesh has to find a sustainable way-out to access education materials at a cheaper price without discouraging intellectualism and creativity.

In accessing cheaper education materials, a number of countries have endorsed the notion of fair dealing/use in their respective national legislation. Some utilize the fair use doctrine, while some follow the fair dealing. The concept of 'fair use' is derived from the United States copyright law in contrast to the concept of 'fair dealing' which is a British 'copyright' concept. It is said that the former is much more flexible than the later⁹¹ since the fair dealing protection is limited to specific

⁹⁰ Štrba (n 23) 38.

⁹¹ Justice Laddie, 'Copyright: Over-strength, Over-regulated, Over-rated' (1996) 18(5) *European Intellectual Property Review* 253.

acts which are laid out in the copyright laws of common law jurisdictions such as the United Kingdom, Australia and India, whereas the fair use is not limited to specific activities rather it requires case-by-case determination.⁹² Unfortunately, no such statutory criteria of ‘fairness’ exists under the copyright framework of Bangladesh; it still follows the conventional list of section 72 and any use falling outside the list is considered as infringement. The Judiciary of Bangladesh is still not concerned about the various facets of fair dealing since it has not found the opportunity to deal with the principles of fair dealing in any litigation.

Surprisingly, the Indian copyright jurisprudence, unlike Bangladesh, is burgeoning day by day although once there was a dearth of judicial precedents on copyright issues in India.⁹³ The Indian Judiciary, recognizing the socio-economic conditions of India, makes it easy for the Indian citizens to access to educational materials at low prices.⁹⁴ In the recent *DU Photocopy case*⁹⁵, the court found that a small photocopy shop named Rameshwari was licensed by Delhi University to make course packs for the students of the university. The publishers of the textbooks, from which course packs were made, brought a legal action against the photocopy shop and the University. The court then ruled that even if the four factors test for the purpose of being education, being non-benefit oriented, the quantity of the work used and effect on value of the work⁹⁶, go against the fair dealing, it would not be considered as infringement as long as it is ‘in the course of instruction’ within the meaning of section 52(1)(i) of the Indian Copyright Act 1957. The court thus declined to apply the US four factor test since the purpose of fair dealing was education. Owing to this case in India, the educational photocopying has been brought under the safe lock of fair dealing. And a fairness model for copyright has been formed there, which is still lacking in many developing countries and LDCs.

Therefore, considering the socio-economic conditions of Bangladesh, it is desirable to develop a ‘fairness’ model for copyright to accommodate the educational

⁹² *United States v Elcom Ltd.* [2002] 203 F Supp 2d 1111, 1121 (N D Cal 2002) (citing *Harper & Row Publishers, Inc. v Nation Enters* [1985] 471 US 539 (549) (1985).

⁹³ *Taylor Bradford v Sahara Media Entertainment Ltd* [2004] (28) PTC 474 (Cal) [56].

⁹⁴ Dharam Veer Singh and Pankaj Kumar, ‘Photocopying of Copyrighted Works for Educational Purposes: Does It Constitute Fair Use’ (2005) 10 *Journal of Intellectual Property Rights* 21, 31.

⁹⁵ *The Chancellor Masters and Scholars of the University of Oxford v Rameshwari Photocopy Services* [2016] (also known as DU Photocopy Case) 233 (2016) DLT 279.

⁹⁶ Copyright Act, s 107 (US) [where the courts will weigh four factors- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for, or value of the copyrighted work.]

needs of Bangladesh. However, Bangladesh is awkwardly bereft of case laws or precedents in copyright actions. Therefore, one inevitably relies on statutory provisions to assess the legal position. So, it is essential to bring in some life to the fair dealing provisions i.e. fair healing⁹⁷ and for that Bangladesh can, like India, conceive educational exceptions through focused interpretation of the Copyright Act. It can be suggested that 'fair dealing' is defined in the Copyright Act to provide greater legislative clarity taking jurisprudential precedents from countries like India.

5.8 Formation of a Copyright Society

The Copyright Act 2000 provides provisions for the formation, registration and administration of the copyright society or copyright management organization (CMO).⁹⁸ To operate as a copyright society, it needs to be registered by following the provisions of the Copyright Act and Copyright Rules 2006.⁹⁹ In addition, the society must obtain exclusive authorization of copyright owners' rights by constructing agreements regarding the administration and duration of the rights, the quantum of fees and the frequency of paying them.¹⁰⁰ Therefore, the society can perform the task of granting license to others to use a protected work on behalf of a plurality of rights holders.

It seems that a detailed provision on establishment and management of the copyright society or CMO has been there a long ago but till date no effective CMO exists in Bangladesh. The music industry has recently formed the first ever CMO¹⁰¹ but it is not functioning properly due to its incapacity to collect and distribute proper royalties from the persons or organizations for using the copyright protected works.¹⁰² As a result, the absence of an effective copyright society like CMO affects the education sector of Bangladesh to find a sustainable solution to access education materials at low prices.

⁹⁷ For a detail analysis of 'fair healing and fair dealing', see Gluseppina D'Agostino, 'Healing Fair Dealing: A Comparative Copyright Analysis of Canada's Fair Dealing to UK Fair Dealing and US Fair Use' (2008) 53(2) *McGill Law Review* 309.

⁹⁸ Copyright Act 2000, ss 41-47 (Bangladesh).

⁹⁹ *ibid*, s 41; Copyright Rules 2006, r 14 (Bangladesh).

¹⁰⁰ *ibid*, ss 42,43,44; Copyright Rules 2006, rr 15-17 (Bangladesh).

¹⁰¹ Afrose Jahan Chaity, 'New Organisation for Ensuring Royalty for Musicians' *Dhaka Tribune* (Dhaka, 25 August 2014) <<https://www.dhakatribune.com/uncategorized/2014/08/25/new-organisation-for-ensuring-royalty-of-musicians>> accessed 20 April 2020.

¹⁰² Sadi Mohammad Shahnewaz, 'Musicians Hopeful for a Structured Future with BLCPS' *The Daily Star* (Dhaka, 03 October 2020) <<https://www.thedailystar.net/arts-entertainment/news/musicians-hopeful-structured-future-blcp-1971529>> accessed 30 January 2021.

Undoubtedly, the formation of an effective CMO can become a sustainable way-out for Bangladesh to provide access to people who cannot afford expensive books at much lower rates. The CMO can usually represent the authors and other rights holders such as publishers, producers and performers and provides licenses to the users of the copyrighted work on their behalf.¹⁰³ Through the CMO, the copyright owners can monitor and control the use of their works and collect fees for such use. By setting fair dealing, it can also establish a high threshold level of copying for academic purposes and if that copying crosses the threshold level, then the CMO can intervene and amass ‘remuneration’ from such unapproved copying and distribute it to the right holders in the form of ‘royalty’. Moreover, the CMO can grant licenses (blanket or transactional) to the users of the copyrighted materials on behalf of the copyright owners. In this respect, an agreement must be made between the CMO and the rights holders authorizing the CMO to provide licenses to others.

6. Conclusion

The philosophical basis of copyright is to promote the advancement of learning. However, the economic/instrumentalist view of the copyright has restrained the free flow of information by granting the copyright holders the exclusive right to reproduce and disseminate their works. Naturally, the developing countries and LDCs now are facing difficulties in meeting the educational needs since most of the copyrighted works are costly and unaffordable. In many countries, the right to education is considered a fundamental right and therefore, the citizens, especially students, need access to the photocopied books. An average person of a developing country or LDC cannot afford to buy a sky-high priced copyrighted book because of the high administrative costs involved in attaining permission from the author and publisher who are the multinationals of the developed countries. The developing countries and LDCs thus must find a sustainable way-out to access education materials at a cheaper price without discouraging the creativity and proper reward.

The article suggests that the developing countries and LDCs can reproduce the copyrighted works at low cost by using their cheap labour and tax break. Moreover, production of low-priced edition books by the local book publishers in collaboration with foreign publishers just like ‘Penguin Book Publishing House’ can be an effective solution for affordable access to education materials.

¹⁰³ Jasim U Khan, ‘Protecting Copyrights’ *The Daily Star* (Dhaka, 21 July 2010) <<https://www.thedailystar.net/news-detail-147578>> accessed 20 December 2020.

Regarding the 'fairness', this article suggests that the traditional fair use provision of Bangladesh needs incorporating some fair healing. Suggestions may include a recent model as developed in India where copying 'in the course of instruction' under section 52(1)(i) of the Indian Copyright Act 1957 was considered fair and not infringing. Given the numerous fairness models for copyright, Bangladesh should formulate its own guidelines or models for fairness after taking into consideration of its socio-economic status, and copying for educational purposes should be given priority in that model. Additionally, in the quest of satisfying the educational needs of Bangladesh, a new international legal instrument along the lines of article 31bis of TRIPS can be introduced in ensuring affordable access to education materials.

Further on copying issues where poor-quality cover-to-cover photocopies of copyrighted books are made, this article shows that a copyright society like CMO can be the proper organization to play a crucial role by acting as a bridge between those shop-owners and authors of the original book. With the help of CMO, intellectualism and creativity may flourish in our society and at the same time affordable access to education materials can raise the standards of education.