

A STUDY ON THE PROTECTION OF COPYRIGHT

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ABSTRACT

Intangible creation of human's intellect. Intellectual Property Rights (IPRs) are much like any other property rights, they allow the owner or creator, of patent, trademark or copyright work to benefit from his or her innovation and activity. The kinds of IP are industrial property and copyright. Copyright relates to artistic creation, such as computer programs and electronic data bases. Copyright law is a branch of that part of the IP law which deals with the rights of Intellectual creator. To define in copyright law, there will needed to state about Berne Convention for the Protection of Literary and Artists Works (1886), Agreement on Trade-Related Aspects of Intellectual Property Rights (IPRs) and WIPO Copyright Treaty. Myanmar Copyright Law, 2019 also contains as an essential role to know about the Copyright Law broadly.

Keyword: Copyright Law in Myanmar, 2019

INTRODUCTION

Intangible creation of human's intellect. The term of Copyright is a property right in an original of authorship (such as literary, musical, artistic, photographic or film work) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform and display the works. Copyright Law has been standardized to some extend through international conventions such as the Berne Convention, Rome Convention and Universal Copyright Convention. Myanmar adopted the Copyright law, 2019. Myanmar Copyright Law is promulgated and thus it is needed to study this Law. The term of Copyright protection in Myanmar is for a period of the life of the author plus 50 years although the amount of fine and punishment are amended in accordance with the existing situation.

Objectives of the study

The objectives of this study are as follows;

- To know the nature of Intellectual Property

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- To know the historical background of copyright law
- To know how to solve infringement of copyright in Myanmar

Method of the Study

The data sources are based on secondary data. The secondary data used from Law, Convention, author books, other related laws and internet sources.

2. NATURE OF INTELLECTUAL PROPERTY

Property is something capable of ownership. There are three characteristics of property, namely: *Possidendi* (the right to possess), *utendi* (the right to use) and *dispodendi* (the right to dispose of). Both tangible and intangible are categories of property. Tangible property such as land or chattels (moveable properties) contains of physical things that can occupy only one place at any give time. The possession of a physical thing is necessarily exclusive so that if it is owned. Intellectual property does not suffer from the characteristics of excludability. For instance, if A has a particular piece of information and tell it to B, A is not deprived of it. Rather, both can possess it. Thus, intellectual property is intangible and incorporeal.²

IP is all around us. Every product or service that we use in our daily lives is the result of a long chain of big or small innovation, such as new designs or improvements that make a product look or function better.³

The areas mentioned as literary, artistic and scientific works belong to the copyright branch of intellectual property. The areas mentioned as performances of performing artistic, phonograms and broadcasts are usually called “related rights”, that is, rights related to copyrights.⁴

Intellectual Property includes diverse forms of human’s intellectual creations. However, concept of Intellectual Property differs from time to time. “The change information technology, market reality (globalization) and generality have affected the contents of Intellectual Property” (U Than Maung, Sittwe).

2.1 Definition of Intellectual Property and Intellectual Property Right

Intellectual Property Rights mean the power vested by law for protecting creation of own intellectual. In that work, the copyright, the right of patent, the right

² C L Bansal, Business and corporate law, 2010, P-723

³ IP Panorama, the most advanced e-learning content on Intellectual Property for Your business developed by WIPO, KIPO and KIPA, p-4

⁴ Intellectual Property Hand book: Policy, Law and Use, WIPO, 2nd edition, 2008, P-3

of industrial design, the right of trademark and other types of rights are also inclusive.⁵

Intellectual Property (IP), very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields.⁶ Intellectual Property Rights (IPRs) are the legally recognized exclusive rights creation of the mind.⁷

Intellectual Property Rights (IPRs) are like any other property rights. They allow creators or owners, of patents, trademarks or copyrighted works to benefit from their own works or investment in a creation. The most common Intellectual Property Rights (IPRs) include patents, copyrights marks and trade secrets.⁸

Intellectual Property is a type of property that contains intangible of the human mind. A kind of intangible rights is protecting commercially precious products of the human mind.

2.2 Role of Intellectual Property

The term Intellectual Property has been used for almost one hundred and fifty years to refer to the general area of law that encompasses copyright, patents, designs and trademarks, as well as a host of related rights.⁹

Generally speaking, IP law protects innovators and other producers of intellectual goods and services by allowing them specific time-limited rights to control the use of those productions.¹⁰

Intellectual Property could be defined as the production and creation of human intellect, including patent rights, new creation, etc. Every nation promulgates laws in order to protect Intellectual Property such as,

- (a) To provide lawful protections of the intellectual and ownership rights of the innovators in their production and that rights are mass people's access to those innovations and intellectual properties
- (b) To promote the production, distribution and usage of the intellectual property's outcomes as a part of the government policy and to advocate fair economic transactions for contributing to the socio-economic development.

2.3 Different Kinds of Intellectual Property

⁵ Section-2(9) of the Myanmar Copyright Law, 2019

⁶ "WIPO Intellectual Property (IP) handbook, policy, law and use," 2nd edition, 2004, p-3

⁷ En.wikipedia.org/wiki/intellectual_property

⁸ www.itu.int/en/ITU-T

⁹ Lionel Bently Brad Sherman, Oxford, Intellectual Property Law, 3rd edition, 2009, P-3

¹⁰ www.ccsenet.org>jpl>article>view

Intellectual Property has the following two main branches:

1. **Industrial Property:** this is a collective name for rights arising from industrial inventions (patents), industrial designs including trade/service marks and trade/service names. The three forms of industrial property are briefly enumerated below:
 - ❖ Inventions (patents): these are new solutions to technological problems.
 - ❖ Industrial Designs: these are aesthetic creations affecting the appearance of industrial products.
 - ❖ Trade/service names and marks: commercial names and designations including indications of sources and protection against unfair competition also form a part of industrial property.
2. **Copyright:** this consists of intellectual activity in the literary, artistic and scientific works.¹¹

TRIPs covers eight types of Intellectual Property namely; Patents, Trade Marks, Copyright, Industrial designs, Geographical Indications, Layout and Design of Integrated Circuits, Protection of Undisclosed Information and Protection of Anti-Competitive Practices in Contractual Licenses. A discussion of the laws relating to patents, trademarks and copyrights follows hereto.¹²

3. INTERNATIONAL LAW RELATING TO COPYRIGHT

International copyright is a copyright which by force of international agreement is extended, in reference to the protection granted an author, beyond the territorial limits of the jurisdiction in which it was obtained.

In the field of traditional copyright (author rights) the main international instruments are:

- The Berne Convention administered by WIPO
- The TRIPs Agreement administered by the World Trade Organization (WTO)
- The newly established WIPO Copyright Treaty (WCT)

In the field of neighboring rights the main international instruments are:

- The Rome Convention

¹¹ C L Bansal, Business and corporate law, 2010, P-724

¹² Ibid.

- The Phonograms Convention
- The Satellite Convention
- The TRIPs Agreement
- The newly established WIPO Performances and Phonograms Treaty.¹³

3.1 Berne Convention, 1886

The Berne Convention for the Protection of Literary and Artistic Works, usually known as the Berne Convention, is an international Convention governing Literary and Artistic Works, which was first accepted in Berne, Switzerland, in 1889.

This Convention is based on three fundamental principles and includes a series of provisions deciding the minimum protection to be allowed, in addition to the special provisions obtainable to developing nations that want to make use of them. The three fundamental principles are as follows;

- (a) Works created in one of the contracting parties must be given the same protection in one of the other contracting parties as the latter allows to the works of its own states.
- (b) Protection must not be subject to comply with any regulation.
- (c) Protection is dependent upon the existence of protection in the nation of original work. If a contracting nation provides for a longer period of protection than minimum described by the convention and the work ceases to be protected in the nation of origin, protection can be refused once protection in the nation of origin ceases.

The treaty provides that if copyright exists in one of these countries, then this copyright is valid in all member countries (contracting parties) who are signatories of the Berne Convention. Now, there are 177 signatory countries in the world.

The Berne treaty is powerless without member states to bring its provisions to life, so WIPO actively encourages states to sign its treaties and to enforce them. Nowadays, membership of the Berne has grown to 170 countries. It is contained Article-1 to Article-38 in Berne Convention and special provisions relating to developing countries. Under the Berne Convention, in general, the term of protection for copyright work is the life of the author plus 50 years but in photographic work or work of applied art, it lasts 25 years but in photographic work. Moreover, in

¹³ WIPO National Seminar on Intellectual Property, "the main international treaties administered by WIPO in the field of Copyright" Yangon, Myanmar, WIPO/IP/YGN/97/4,p.2.

cinematographic works, it lasts 50 after making publication and if failed to publish after creating of the work.

3.2 TRIPS Agreement, 1994

The TRIPs Agreement forms part of the WTO. Agreement and thus binds all WTO members, currently standing at 153. Since 1 January 1995, The United Kingdom had been one member of WTO. The TRIPs Agreement incorporates, *inter alia*, the key provisions of the Berne convention.

According to Article-12 of Section (1) of TRIPs Agreement, 1994, except a photographic work or a work of applied art, the term of protection of a work, date work first published, will be in force during the lifetime of the inventor, and until fifty years after the inventor's death.

According to Article-14(5) of Section (1) of TRIPs Agreement, 1994, performers and producers of phonograms shall be protected up to exactly 50 years since the starting print of production.

Therefore, an essential element of the TRIPs Agreement is that it settles disputes between WTO members about subject to TRIPs Agreement procedures. In TRIPs Agreement, the provisions relating to copyright are from Article-14 in Section 1. In Article14, it is provided the term for protection of performers and producers of phonograms. A distinctive feature is that it is not included the provisions relating to moral right in spite of containing economic rights in this Agreement.

3.3 WIPO Copyright Treaty(WCT), 1996

Development in technology during the 1980s and 1990s created various problems and uncertainties for the copyright law. In 1991 and succeeding years, WIPO Summoned Committees of Experts to consider these problems and to draft a possible protocol to the Berne Convention. The Diplomatic Conference on Geneva from 2 to 20 December 1996 was held that how to solve Copyright and Neighboring Rights issues. Two treaties sprang from this Conference, one of which was the WIPO Copyright Treaty 1996(WCT). The relationship of this treaty to the Berne Convention is that it is a special agreement within the meaning of Article 20 of Berne; i.e an agreement entered into by Berne Union Countries.¹⁴

This treaty allows countries of the Union to determine the term of protection for photographic works and works of applied art (in so far as they are protected as

¹⁴ Oxford, "Intellectual Property Law: Text, Cases and Material", 2nd edition, 2013, p-58.

artistic works) provided it is a minimum of 25 years from the making of the work. The effect of Article-9 of the WCT is that 50 years *post mortem auctor*(pma) will now be applicable to photographic works and works of applied art.

The treaty will come into force after 30 instruments of ratification or accession by states have been deposited with the Director General of WIPO, who is the depositary of the Treaty.¹⁵ The total number of Articles contained in this treaty is twenty-five. It is a protocol of the Berne Convention and although.

The WCT contains clarifying provisions such as Article-4, which states that computer programs are protected as literary works which in the meaning of Article-2 of the Berne Convention and Article-5, which says the same for databases. Article-2 of the emphasizes that copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concept as such. In terms of exclusive rights, Article-1(4) of the WCT states that contracting Parties shall comply with Article 1-21.

3.4 WIPO Performances and Phonograms Treaty, 1996

The second treaty to emerge from the Diplomatic Conference, 1996 was the WIPO Performances and Phonograms Treaty, 1996. There is no provision in the WPPT imposing an obligation on Contracting States to comply with the Rome Convention, but nothing in the WPPT is taken to derogate from the existing obligations the Contracting Parties have to each other under the Rome Convention.

The Protection given to performers improves significantly on that available under the Rome Convention. This is because performers are given exclusive rights in relating to their performances and also moral rights in respect of lives, aural performances or performances fixed in phonograms. Producers of phonograms are given exclusive rights of authorizing the reproduction, distribution and commercial rental of their phonograms, as well as the making available of their phonograms via on demand transmission, such as the internet. There is also a right to equitable remuneration for the use of phonograms published for commercial purposes for broadcasting or for any communication to the public which can be claimed by the performer or producer or both.¹⁶

The term of protection for both performers and phonogram producers is 50 years, measured in the case of the former, from the end of the year in which the

¹⁵ WIPO, "Summaries of Convention, Treaties and Agreements Administered by WIPO," p-43.

¹⁶ Oxford, "Intellectual Property Law: Text, Cases and Material", 2nd edition, 2013, p-59.

performance was fixed in a phonogram and in term of the latter, 50 years from the end of the year in which the phonogram was published or failing publication within 50 years of fixation, 50 years from the end of the year in which the fixation was made.¹⁷

There are 94 countries that are parties to the WIPO Performance and Phonograms Treaty.¹⁸ Although WCT protects and maintains the rights of authors, WPPT is for the Protection of the rights of performers and producers of phonograms. It gives national treatment like after Convention.

3.5 Rome Convention, 1961

Technological developments post-World War-I led to a new trio of interests that sought copyright protection. These are producers of phonograms (i.e sound recordings), performers and broad casters.¹⁹

The Conference for the preparation of the Draft Convention was held at the Hague in 1960 and this was followed in 1961 by the Diplomatic Conference on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, in which a total of 41 States participated. The signatories to this Convention have now grown to 86, of which the UK is one.

The beneficiaries of protection are, unsurprisingly, performers, phonogram producers and broadcasting organizations.²⁰

In modern time, related right is a term in copyright law, used in opposition to the term “authors’ rights”. Both authors’ rights and related rights are copyright in the sense of English Law.

In relation to authors’ rights, related rights are independent of any authors’ rights which might also exist in the work, as is made clear in the various treaties.²¹ Hence a CD recording of a song will be concurrently protected by four different copyright-type rights;

- The authors’ rights of the composer of the music;
- The performers’ rights of the singer and the musicians;
- The authors’ rights of the lyricist;
- The producer’ rights of the person or corporation which made the recording.

¹⁷ Ibid, pp-59-60.

¹⁸ <https://www.google.com/search?hl=en-GB&s>

¹⁹ Oxford, “intellectual Property Law: Text, Cases and Material”, 2nd edition, 2013, p-56.

²⁰ Oxford, “intellectual Property Law: Text, Cases and Material”, 2nd edition, 2013, p-56.

²¹ Article-1nof the Rome Convention in 1961.

Article-14 of the Rome Convention set a minimum term for the protection of performers' rights of twenty year from the end of the year in which the performance was made; the TRIPs Agreement (Art-14(5)) has extended these fifty years.

Article-14 of the Rome Convention sets a minimum term for the protection of broad casters' rights of twenty years from the end of the years in which the broadcast was first made confirmed by the TRIPs Agreement.²²

In current situation, Rome Convention members are 122 states have ratified or acceded to the Rome Statute in 16 May 2019. Under Article-14 of the Rome Convention, the term for the protection of performers' rights is twenty years from the end of the year in which performance was made but TRIPs Agreement has extended this fifty years. And also for broadcasters' rights, the term of protection is twenty years like performer.

4 PROTECTION OF COPYRIGHT IN MYANMAR

Myanmar Copyright Law was promulgated on 24 May 2019 and at the same time Copyright Act, 1914 was repealed.

4.1 Historical Background of Copyright in Myanmar

Myanmar is not signatory country in the Berne Convention. Although Myanmar needs to implement and subjects to between Article 1 and 12, Article 19 of the Paris Convention and the terms of TRIPs by no later than 1st July 2021.

The basic law on copyright in Burma is the Copyright Act of 1911 (promulgated 1914 and the Merchandise Marks Act, 1889). Related and subsequent amending legislation are listed at the relevant WIPO page. Burma has not signed the Berne Convention but it has signed the TRIPs Agreement of the World Trade Organization. Burma is a member of the World Intellectual Property Organization. The 1911 Copyright Act (formerly known as the India Act III, 1914) was based on the 1911 Copyright Act of the United Kingdom. Despite the Act, no formal copyright registration procedure has ever been instituted in Burma. The Act also does not recognize the copyright of any other country and registration of copyright must be carried out using other methods that have been developed over the years. In 2004, new copyright legislation began to be drafted based upon the WIPO model law but that legislation has never entered into force.

²² Art-14(5) of the TRIPs Agreement in 1994.

During 2016-2017, the draft copyright law was jointly reviewed by the Attorney General's Office and the Ministry of Education (the ministry responsible for copyright). Then it was sent by the office of the Union Government to Parliament (known as the Hluttaw) where it is expected to be adopted on 24 May, 2019.²³

4.2 Definition of Copyright in Myanmar

Copyright mean the privileges regarding copyright obtained by the original inventor of copyright under this law.²⁴ Section-2(j) of Myanmar Copyright Law, 2019 states that related rights mean the privileges of entertainers, phonogram producers and transmission organizations prescribed in Chapter-14 of this Law.

According to Section-2(k) of Myanmar Copyright Law, 2019, inventor of copyright mean any person, his/her successor, or any organization founded lawfully expressed hereunder-

- (1) Original inventor;
- (2) The person who is not original inventor who has automatically obtained business rights since before or the organization founded lawfully;
- (3) The person who is transferred as an inventor of business rights in accord with law (or) the organization founded lawfully.

Owner of related rights mean any person, his/her successor, or any organization founded lawfully expressed hereunder-

- (1) Entertainer, phonogram producer and transmission organization,
- (2) The entertainer who has automatically obtained business rights since before, phonogram producer and the person that is not transmission organization (or) organization lawfully founded, and
- (3) The person who is transferred as an inventor of business rights in accord with law or the organization founded lawfully.²⁵

Copyright deals with the rights of intellectual creators in their creation. Most works, for examples books, paintings or drawings, exist only once they are embodied in a physical object. But some of them exist without embodiment in a physical object.

²³ <https://en.m.wikipedia.org/wiki>

²⁴ Section-2(i) of Myanmar Copyright Law, 2019.

²⁵ Section-2(k) of Myanmar Copyright Law, 2019.

For example music or poems are works even if they are not, or even before they are, written down by a musical notation or words.²⁶

Copyright is the exclusive right of the author to copy the literature produced by him and to stop others from doing so. This is a statutory intangible right against copying of defined types of cultural, informational and entertainment productions which may be the creations of authors, playwrights, composers, artists and film directors. It also includes computer programs.²⁷

4.3 Terms of Copyright in Myanmar

Protection for copyright and other related rights will be in force during the lifetime of the author, and until fifty (50) years after the author's death.

Section-17 of Myanmar Copyright Law, 2019 described that even it is not registered by law in respect of the handiwork of copyright (a) protection period for business rights is, as follows-

- (1) 50 years from the year of death besides the period original inventor is alive.
- (2) If it is the copyright of the original related owner, 50 years from the year of his death besides the period last original inventor is alive.
- (3) If it is a handiwork of picture/sound (or) movie, 50 years from the year acted to be enjoyed by the public with the permission of original inventor (or) 50 years from the year created handiwork if not acted like that.
- (4) If it is the handiwork of copyright published without mentioning name, or pseudonym, sub-name, 50 years from the year lawfully acted to be enjoyed by the public. However, if appeared up who original inventor is before the end of that period- period expressed in sub-section (1) and (2).
- (6) If it is applied fine arts, 25 years from the year that handiwork is made.

Section-17 (c) of this law prescribed that in calculating protection period inclusive in Sub-Section(a), it shall be calculated with effect from 1st January of the year combining with the year original inventor passed away, created handiwork, lawfully acted to be enjoyed by the published as first time in a row.

Terms of copyright protection are shown in the table below:

| Type of Work | Protection Term | Starting Date |
|--------------|-----------------|---------------|
|--------------|-----------------|---------------|

²⁶ “WIPO Intellectual property Handbook; Policy, law and use,” 2nd edition, 2008, P-40.

²⁷ C L Bansal, Business and corporate law, 2010, P-781.

| | | |
|-----------------------------------|--|--|
| Literary works | Lifetime of the author (or lifetime of last surviving author if multiple authors) + 50 years | Date work first published |
| Works published under a pseudonym | 50 years | Date work first published / first made available to the public |
| Audiovisual works | 50 years | |
| Collective works | 50 years | |
| Works of applied art | 25 years | Date work was created |

Prevention period for associate rights of entertainer, photogram producer and transmission organization is mentioned in chapter-14, section-37, 38, 39, 40 and 41.

4.4 Law Relating to Copyright in Myanmar

In Myanmar, as Myanmar Copyrights Law, 2019 is applicable for the protection of copyright words other related laws are also promulgated. On 28, August, 2015, Broadcasting law was enacted as follows-

According to Section-50 of the Broadcasting Law, 2015, any individual or organization shall not be allowed to own and operate more than one as a business for television and broadcasting services in a broadcasting zone only. But this provision does not concern with the operating television and broadcasting services and distribution process.

Under Section-51 of the Broadcasting Law, 2015, as a television and broadcasting zone, the co-owner of private newspaper service or private television and broadcasting services shall not be permitted more than 30% of another services, if they own 100% in full of stated above one service.

Section-92 of the Broadcasting Law, 2015 state that nobody is granted to operate a television and broadcasting service without issuing the license by the State government.

Nobody is granted to continue its television and broadcasting service after termination of its license until such license is renewed by the State government.²⁸

Section-94, the Broadcasting Law, 2015 stated that any one shall not be violated the provisions of sections-50 and 51 of this Law.

²⁸ Section-93, the Broadcasting Law, 2015

Section-95, the Broadcasting Law, 2015 stated that nobody is granted to continue its television and broadcasting service upon revocation and termination of its license.

Section-96 of the Broadcasting Law, 2015 prescribed that any person who infringes the prohibition as provided in section-92 shall be convicted from minimum 300 Lakhs to maximum 500 Lakhs and seized properties.

Section-97 of the Broadcasting Law, 2015 prescribed that any person who infringes the prohibition as provided in section 93 shall be convicted from minimum 50 Lakhs to maximum 100 Lakhs and seized properties.

According to Section-98, the Broadcasting Law, 2015, any person who infringes the prohibition as stated in section-94 shall be convicted from minimum 100 Lakhs to maximum 300 Lakhs and seized properties.

Any person who violates the prohibition as stated in section-95 shall be omitted from minimum 300 Lakhs to maximum 500 Lakhs and seized properties.

Section-16 of the Printing and Publishing Enterprise Law Bill, 2013 described that nobody shall undertake with printing, publishing and operation the news agency without obtaining the registration certificated.

Section-19 of the Printing and Publishing Enterprise Law Bill, 2013 described that nobody shall undertake with printing, publishing, distributing and operation the news agency within the registration certificated is revoked or restricted for a certain period.

Under Section-20 of the Printing and Publishing Enterprise Law Bill, 2013 if anyone is visibly punished for offending anything inclusive section 16 and 19, he/ she shall be punishable with a fine from 50 Lakhs up to 100 Lakhs. He/ she shall not be paid a fine, this person shall be imprisoned for six months.

According to Section-36 of the Printing and Publishing Enterprise Law Bill, 2013, the government promulgated the Computer Science Development Law in 1996 as SPDC Law No.10/96. One of its objectives is to supervise the import and export of computer software of information. Section-7(g) of the Law relates to Computer Software and Information which are not permitted to be violation of this Section by Section-36 with imprisonment for a term of a minimum 5 years to 10 years and a fine too.

The Television and Video Law which was promulgated on 29 July, 1996 also provides penalties for copyright a video tape for the commercial purpose. Section-33

of this Law states that whoever commits the following act shall, on conviction, be punished with imprisonment for a term which may extent to 3 years or with fine which may extend to kyat 100,000 or with both:

- (a) Distributing, hiring or exhibiting the copied television programme transmitted by the government department or government organization for commercial purpose;
- (b) Copyright, distributing, hiring or exhibiting for commercial purpose or video tape which has already obtained video censor certificate, without the permission of the license holder of video production business or video tape distribution business.²⁹

So, in Myanmar for the protection of intellectual property there are many related laws beyond the Copyright Law.

4.5 Infringement of Copyright in Myanmar

Section-13 of the Myanmar Copyright Law, 2019 provides that works protected under the new Copyright Law will include the following:

- (a) Books, pamphlets, poems, novels, articles, computer programs and other writing;
- (b) Addresses, lectures, speeches, sermons and other oral works;
- (c) Dramatic and dramatic musical works, pantomimes, choreographic works and other oral works;
- (d) Musical works with or without accompanying lyrics;
- (e) Audiovisual works including cinematographic works;
- (f) Works of architecture;
- (g) Works of drawing, sketching, painting, carving, sculpture, engraving, mosaic, works pottery ware, terracotta, jewelry, handicrafts, costumes and indigenous textiles;
- (h) Lithography, weaving, tapestry and other works of fine art;
- (i) Photographic works;
- (j) Textile designs;
- (k) illustrations, maps, plans, sketches and three-dimensional works related to geography, topography, architecture or science; and
- (l) works of traditional cultural expression and expressions of folklore.

²⁹ Myanmar Laws, Office of the Attorney General, 1996, p-188.

According to Section-73 sub section (a) of the Copyright Law, 2019, the person of rights can apply opening miscellaneous case in copyright court for laying down temporary decree in accord with the prescriptions inclusive in section 74 and 75 under civil law for his loss and tort.

According to Section-73 sub section (a) of the Copyright Law, 2019, in case of a copyright infringement, the copyright inventor may pursue administrative action, civil action and criminal action.

The following are a few examples of copyright infringement cases which have occurred in Myanmar over the year. Note should be made that the majority of the cases, were settled amicably either out of Court or at Lower Court level. There have been only two reported cases at Supreme Court Level, one in 1939 and the other more recently in 1999.

The novel “Gone Myit Thu” written by Daw Dagon Khin Khin Lay was published in 1939. Subsequently Daw Khin Khin Lay filed in Civil Court, a case of copyright infringement against Moe Film Company and U Kyaw Swe for their movie “Pone Pama” claiming that the movie had been based upon her novel without her authorization to do so, and on the same day of filing of the case, Daw Dagon Khin Khin Lay applied for and was granted an injunction against the showing of the movie at the “Royal” and “Ya Da Na Pone” cinema hall.³⁰

Maung Za Ni Ya wrote and published a novel called “Hka Paik Hneik.” Film star, Kyaw Hein made a movie called “Mon Htet Chein Dwin Nay Win Thi” based on the said novel. Maung Za Ni Ya made a complaint of copyright infringement to the Tamwe Township Literary Worker’s Association. The Association in conjunction with the Bahan Township literary Worker’s Association intervened between two parties and the cases was settled amicably out of court.

The dispute over the adaptation, without authorization, of Saya Shwe Oo Daung’s “Yadanabon” novel, into a movie of the same name by the A1 film Company was settled amicably out of court.

Pho Parlay, director of Yangon Films adapted without authorization, Saya Thardu’s novel “Chit San Namuna” into a movie. Saya Thardu filed a case in criminal court of copyright infringement under Section-7 of the old Copyright Act against Daw Khin Ma Ma, owner and Pho Parlay, Director of Yangon films. The case never

³⁰ Journal of the Asia Research Centre, Yangon University, Vol-2, No-1, pp-121-122

reached a higher court. Following the farming of charges, the two parties to terms and the case was amicably settled.

Now, the new Copyright Law described by Copyright Management. Because the user and author live in the same city and some country, many of users have not used to ask the permission of author. If a dispute arise between user and author, the user will give author damages or compensations. And they settle, amicably out of the court. So, concerning with knowledge's of copyright requires to spreads throughout Myanmar widely.

4.6 Remedies on Infringement of Copyright in Myanmar

Offenses under the Copyright Law include the unauthorized reproduction, transmission and distribution of copyrighted works, the possession of infringing goods for commercial purposes, the importation of infringing items into Myanmar, and more.

Section-43(a) of Myanmar Copyright Law, 2019 prescribed that on account of the copyright and regarding associate right management-

- (1) Any electronic fact and information shall not be omitted or changed without any consent of the person of rights.
- (2) After omitting or changing under above sub-section(1) the handiwork of copyright or the handiwork of associate rights or other cases prevented under this law, it shall not be published, submitted for publication, transmitted, or transmitted connecting with the public.

Section-43(b) of Myanmar Copyright Law, 2019 described that the facts inclusive in section (b) shall not be concerned with the public policy or any action of the state government granted by law for security.

In respect of the arrangement preventing by technology-

- (a) It shall not be evaded, omitted, destroyed from the arrangement preventing by effective technology.
- (b) Producing the instruments, goods, parts or services made for business paying attention to evade, or to be successful in evasion or to provide from the arrangement preventing by effective technology, importing, distributing, selling, leasing or advertising for lease, or keeping in hand shall not be done.³¹

³¹ Section-44 of Myanmar Copyright Law, 2019

Whoever makes any Law without the consent of the authorized person, except doing for own use and houses use of the respective person, infringes the provisions of this Law

- (1) certified copying, express or implied, copyright materials;
- (2) possessing or selling the thing infringing the copyright;
- (3) importing the thing infringing the copyright into the Union of Myanmar and
- (4) acting any manner which is barred under section-43 and 44 of this Law.³²

According to Section -82, sub-section (b) of this Law, possessing of any mechanism which is applied to produce or reproduce the thing infringing the copyright or related right.

If anyone is punished again for offending that case after he/she was visibly punished for offending anything inclusive in section-82, he/she shall be imprisoned for three years at least or not more than 10 years at most and then, can also be fined not more than Ks.100 lakh.³³

Section-84 of this Law states that if anyone is visibly punished for offending any case mentioned hereunder, he/she shall be imprisonment not more than 1 year, fined not more than Ks.20 lakh or both-

- (a) Issuing in wrong way the registration certificate of copyright or registration certificate of associate rights
- (b) Entering in wrong way in the registration certificate of copyright or registration certificate of associate rights.

In spite of its existence, still no registration facilities for copyright have been established in Myanmar. Nevertheless, registration is non-essential under New Law. Mostly, disputes in respect of copyright and its neighboring rights are settled between parties concerned amicably out of court, sometimes through relevant NGOs such as Writers Federation, Motion Picture Federations, Music Federation, etc. section-54 of the Specific Relief Act also applies to infringement of copyrights.

Myanmar adopted the older Burma Copyright Act and it began into force in on 24thFebruary, 1914 and it contained 4 chapters and 14 sections. Nowadays, the New Myanmar Copyright Law enacted 24thMay, 2019 and it contains 24 chapters and 102

³² Section-82(a) of Myanmar Copyright Law, 2019

³³ Section-83 of Myanmar Copyright Law, 2019

sections. The new Myanmar Copyright Law of this rules were based on the TRIPs Agreement. The amount of fine and punishment had been changed in accordance with the existing currency. In this Law, the offences and punishments were provided in section-82 to 85 in chapter-23.

In the case of U Hla Win and two others Vs. Daw Kyi Kyi @ Daw Yin Wai Lwin, it mentioned in U Than Maung(Sittwe) like that the proceeding of the civil suit of litigation, “U Hla Win and two others Vs. Daw Kyi Kyi @ Daw Yin Wai Lwin”, (the Supreme Court, BLR, 1999, p-208) in this case, there has a dispute between the author and producer, about her written book, “Hmine Wae Chit Thaw Khet Thissa”. The Author has copyright and without her permission, the producer cannot produce like to make film about her book. If she gives permission of document or transformation legally to producer, the producer can make film and can produce. Above mentioned is the judgment of the Supreme Court.

In 1999 Myanmar Law Report (civil) p-208 the brief of the case is that the author Daw Kyi Kyi wrote the novel, “Hmine Wae Chit Te Khet Thissa” and made publication of it in 1981. Then she sold its manuscript to one Daw Khin Than for reproduction of it into Videa feature for the amount of kyat 1,000. Daw Khin Than resold it to the Phowa Video production and also submitted her objection to the Myanmar Film Federation. But the production went on under a slightly changed name of “Hmine Wae Chit Thaw Khet Thissa” and also made some changes to the theme as well as the text of the same. The Divisional Court in exercise of its original civil jurisdiction, decided in favour of the plaintiff (author) and ordered the defendants (Phowa Video Production) to pay kyat 500,000 to the plaintiff as she claimed about for damages to her copyright. The Judge reduced the amount of compensation from kyat 500,000 to 50,000 on the ground of that the amount of damaged should be determined only in consideration of the authors work and on the basis of substantial damages.³⁴

In Myanmar copyright Law, the provisions are based on the TRIPs Agreement and it contains moral rights and economic right. If the copyright owner transfers his economic rights, the moral right will remain with him and the term of copyright protection should be 70 years plus the author’s life because the copyright protection in the world is between 50 years and 100 years.

³⁴ 1999 Myanmar Law Report, p-208

5. CONCLUSIONS AND RECOMMENDATIONS

Intellectual Property rights make human invents and appears up studiosness and they are therefore the fuel encouraging to progress the whole man-kind. For example movie, musical recording, production and computer software casted millions make many millions of people in the world happy and pleasant. If there is no any rights protection, these works cannot stand. Copyright and associate rights protection is very essential for creation and invention of human.

Copyright Law is a branch of that part of the Intellectual Property Law. Copyright gives the author of an original work exclusive right for a certain time period in relating to that work, including its publication, distribution and adaption, after which time the work is said to enter the public domain. Copyright Law have been standardized to some extent through international convention such as the Berne Convention(1886), TRIPs Agreement (1994), Rome Convention (1961), WIPO Copyright Treaty (1996) and WIPO Performances and Phonograms Treaty (1996). These multilateral treaties have been ratified by nearly all countries and international organization such as European Union or World Trade Organization require their member states to comply with them. Although there are consistencies, among nations intellectual property law, each jurisdiction has separate distinct laws and regulations about copyright. Under International Convention and treaties, the protection of Copyright in each country depends upon their municipal Laws. In the relating about Copyright, term of protection give in each country lasts 50 or 70 years. In most countries, the time of protection for literary work is durable 50 years. For photograph, duration of Copyright will be 25 years. But it differs in different countries.

And then, in Myanmar, Myanmar Copyright Law, 2019 is applicable for the Copyright Protection. Registration of copyright will not be compulsory under the new law. Myanmar Copyright Law, 2019 which is based on TRIPs Agreement was promulgated, the development Copyright Law in Myanmar was become higher than the early previous stages.

Although, Copyright protection is enforced in the World, there are many problem till now. Nowadays, the main problem is that. Internet becomes easier to reproduce the transmission of images, data and sound across and as it becomes more and more difficult to trace the source of unlawful copies, enforcement of existing copyright laws is becoming almost impossible. So all countries in the world should

have the effective copyright law and thus, the author and their original works will outcome more and more. They achieve more by acknowledging writers, artists and inventors, by giving suitable monetary rights and by attracting them with incentive. There shall be better productions. Enterprises and companies will also invest easy and more by making rights exist and making them implement. Mutually, we can enjoy more strange things all over the world in the field of culture, knowledge and entertainment. It makes business and social affairs progress more.

On 24 May 2019, the Republic of the Union of Myanmar passed the Copyright Law (Law No.15/2019). It will come into force after the President of Myanmar issues a notification to that effect. It repeals the Copyright Act, 2019. After that the public have to face difficulties and challenges, so needs to establish a new copyright protection system.

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