

LEGAL ANALYSIS ON THE STATUS AND PRACTICES OF COPYRIGHT LAW IN MYANMAR

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Abstract

Intellectual Property, IP refers to the literary and artistic work created by the mind, ranging from artwork to commercial patents and trademarks to newly developed computer programming work. Similar to other forms of tangible property such as land and cash, the intellectual property created by the mind has to be protected and manipulate to provide benefits to its owners. Copyright, which is a branch of the Intellectual Property Rights, protects the literary and artistic work of the creator by granting the creator access to the protection of their work and ensuring the benefits reached to the creator. Myanmar also sets up and implements laws and regulations to protect the intellectual property rights, particularly copyrights of its citizen. Despite the existence of the copyright law since 1914, the newly enacted 2019 Copyright Law have included significant changes to better benefit the citizens of Myanmar concerning copyrights and related rights matters. Thus, this study explores international instruments on copyrights as well as the status and practices of copyright in Myanmar by referring to the historical law and the recently promulgated 2019 Copyright Law.

Key Words: Intellectual Property, Intellectual Property Right, Copyright Law in Myanmar.

INTRODUCTION

Intellectual property, IP refers to creations of mind everything from works of art to inventions, literary and artistic works, designs, and symbols, name and images used in commerce. Intellectual property rights are exclusive rights given to the result generated by intellectual activities of human being and they mean intangible rights which have economic values. According to the World Intellectual Property Organization, “intellectual property rights such as copyright, patents and trademarks can be viewed like any other property right. They allow the creators or owners of IP to benefit from their work or from their investment in a creation by giving them control over how their property is used.” Copyright relates to literary and artistic creations, such as books, music, paintings and sculptures, films, and technology-based works, such as computer programs and electronic databases. It is a type of the Intellectual Property that gives its owner the exclusive rights to copy and contribute a creative work usually for a limited time.

Myanmar, like other countries across the world, also set up and implements laws and regulations to protect intellectual property rights. The Republic of the Union of Myanmar

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adopted a new copyright law in 2019, Pyidaungsu Hluttaw Law No. 15, 2019. It repeals a law enacted over a century ago, in 1914 that was based on the 1911 Copyright Act of the United Kingdom. A whole new infrastructure for intellectual property, IP is also being developed, such as the establishment of a national IP office, a new IP court, and a system of collective management. The new copyright law introduces many important changes. For example, the term of protection is extended from life of the author plus thirty years to life plus fifty years and foreign works in Myanmar will receive protection for the first time.

The study was divided into four main sections - Introduction, Literature Review, Analysis and Findings, and Conclusion. In the Introduction, this section outlined the background of the study, study objectives, research methodology, and scope and limitation of the study. The Literature Review section included international instruments on Intellectual Property Rights in general and the status and practices of Copyright Law in Myanmar. In Legal Analysis on Myanmar Copyright Law, Myanmar's Copyright Law was analyzed from a legal perspective. Then, the section on the Recommendation and Conclusion was presented.

Objectives of the Study

The objectives of the study are as follows:

1. To learn the characteristics of Intellectual Property Rights and Copyright Law in general
2. To examine the status and practices of Copyright Law in Myanmar

Research Methodology

The study was carried out through desk reviews of secondary data sources such as books, published journals, and online sources. The research focused on international instruments on intellectual property rights and copyrights laws in general and in Myanmar.

Scope and Limitation of the Study

This study was conducted purely on secondary data although using available case studies on copyright-related cases in Myanmar. Despite the long-term existence of copyright law and a further improvement in the laws and regulations on copyright, people's awareness relating to the rights to copyright is limited. Thus, supporting case studies were not very much in the analysis. Apart from this, this study tried to provide a wide-ranging analysis of the status and practices of copyright law in Myanmar within the available scope.

LITERATURE REVIEW

International Instruments on Copyright

This section explores international instruments on intellectual property including copyrights as the protection of copyrights, or intellectual property rights in a broader sense, operates not only at the national level but also at the cross-border stage.

Berne Convention calls for the protection of literary and artistic works, which was the first step of Copyright protection at an international level. Any country can become its signatory, and the convention was adopted on September 9, 1886, and enforced from December 4, 1887, onward. Up to now, 181 out of 195 countries are signatories to the Berne Convention though Myanmar is not included. Three fundamental principles of the Convention are – (1) The same national treatment in copyright protection has to be given by other remaining member countries for the work produced in one of the member countries. (2) Automatic protection has to be granted. (3) When the work produced in one of the member countries has been used in another member country/countries, the work will be directly protected in the country's/countries' legislation where the work is used.

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement established by the World Trade Organization (WTO) came into force on April 15, 1994. The TRIPS agreement covers many types of intellectual property including copyright, patents and trademarks, trade secrets, and so on. Any member country of the WTO is automatically obliged to follow the agreement even though a specific time for enforcement of the TRIPS Agreement was given. Thus, it can be said as the most fundamental international agreement on intellectual property rights. As Myanmar is also a member country of WTO since January 1, 1995, it is automatically bound by the TRIPS Agreement. Meanwhile, the TRIPS transition period for Myanmar to apply its terms was July 1, 2021. However, it has been extended from this time to July 1, 2034.

The World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) was adopted in 1996. It is a special agreement under the Berne Convention. What makes it unique from Berne Convention is the inclusion of specific economic rights in addition to the rights granted by the convention. Some examples of economic rights granted to authors are the rights to distribute, rent, and communicate to the public. The term of protection is granted at least 50 years for any kind of work eligible under the protection of this treaty. Furthermore, the WCT also handles copyright protection relating to computer programs and databases. The WCT was implemented in 2002. The treaty is available for WIPO member countries and European Community.

The Beijing Treaty on Audiovisual Performances (or Beijing Treaty) was adopted by the Diplomatic Conference on the Protection of Audiovisual Performances in Beijing in 2012. This treaty grants fixed audiovisual performers into four types of economic rights, such as the rights to reproduce, distribute, rent, and make available to the public. For unfixed performers like live performers, the treaty grants three economic rights, such as the right to broadcast, communicate to the public, and fixation. The protection term's duration is also at least 50 years. Its openness is also similar to WCT, by opening to the WIPO member countries and to the European Union.

Status and Practices of Copyright Law in Myanmar

The Burma Copyright Act was promulgated in 1914 composing 13 sections. Almost all of the provisions for the Burma Copyright Act were subjected to the Copyright Act 1911 of the United Kingdom of Great Britain and Ireland while a few sections were modified. Thus, the work covered in the 1914 Burma Copyright Act included works such as literary, dramatic, musical, and artistic works; sound recordings, films, broadcasts, and published architectural work.

Despite the existence of the copyright act, there were limited cases sued and/or charged under this law. A few case studies are included here. The very first reported case is called Maung Nyi Pu Vs. East End Films, AIR 1939 (Rangoon) 266. The photo of actress Ma Than Tin was published in the Burmese Cinema Journal in June 1937. The plaintiff, U Nyi Pu who is the sole proprietor of A1 Film company, claimed that Ma Than Tin which was photographed was the copyright of the plaintiffs. He sued the East End Company for violating the copyright of the A1 Film company by using the photograph of the actress Ma Than Tin. The plaintiff won the case under the court decision decided in February 1939, and the defendant, the East End Films had to compensate the plaintiff with the fee amount, Rs. 100.

The second reported case, which also brought more public awareness towards the citizens' rights to the copyright, was the civil lawsuit case of U Hla Win and two others Vs. Daw Kyi Kyi @ Daw Yin Wai Lwin, Pyay1999, MLR(Civil) 208. The case is a dispute between the author and the producer over the book called "Hmine Wae Chit Tae Khet Thisa" written by the appellant, Daw Kyi Kyi and published in 1981. According to section 1(1) of the 1911 Copyright Act, Daw Kyi Kyi had copyright to the book. According to section 2(1) of the 1911 Copyright Act, one could be charged with a violation of the copyright if one used the work without the consent of the owner. In this specific case, Daw Khin Than bought the manuscript from Daw Kyi Kyi with the amount of Myanmar Kyats 1,000 for video production. Then, Daw

Khin Than sold the manuscript to Phowa Video Production and Phowa Production mass-produced the video across the country. According to section 1(2)(c) and section 5(1) of the copyright law of Myanmar, the rights to copyright were transferrable under a written contract of transfer but were illegal if it was done without any written and signed contract. There was nothing such as the transfer of copyright while Daw Kyi Kyi sold the manuscript to Daw Khin Than. Although Daw Khin Than sold the manuscript to Phowa Video Production, the Phowa Video Production did not get any copyright from the original owner. In addition, the Phowa Video Production also made modifications to the work of the author including the contents and title of the manuscript, reproduced as a video, and broadcasted nationwide. Thus, the Phowa Video Production violated the copyright of the author, appellant Daw Kyi Kyi and was charged to compensate Myanmar Kyats 500,000 to the author according to the Division Court.

The third case is a special appeal case between the plaintiff, Daw Wa Dan Khaung Nin, and the defendants - Daw Kham Yin, Daw New Oo and U Min Nyo, ka U Htin Fu. In the case of Daw Wa Dan Khaung Nin Vs. Daw Kham Yin and two others, 2009 Special Appeal Case, No. 37, 38& 39, the defendants argued that the traditional clothing patterns were related to all nationalities and existed since the ancient past. Thus, it could not be given copyright. The plaintiff sued the defendants for imitating the Rawan ethnic female longyi design of the plaintiff's production and selling the longyi afterwards. The plaintiff requested a compensation amount of kyats 6,000,000 for her copyrights and related civil lawsuit processes. The court decided that the plaintiff had the right to copyright to her design and the right to the compensation. Thus, the defendants had to compensate the plaintiff with the amount of kyats 2,000,000 per defendant.

Although the 1914 Burma Copyright Act laid an essential ground for the protection of copyright in Myanmar, due to the inclusion of basic provisions, the 1914 Act did not cover the copyright issues relating to many audiovisual works and computer programs. In addition, the 1914 Act covered only domestic copyright issues. Thus, the new copyright law was ratified in Myanmar in 2019. This new law will be discussed and analyzed further in the next section.

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Definition and Scope of Work Being Protected

Copyright Law was promulgated in Myanmar on 24 May 2019. There were 24 chapters and 102 sections in this new Copyright Law of Myanmar.

As per section 2(i) of the 2019 Copyright Law, "Copyright means an exclusive literary and artistic right of the original author or creator of a Literary and Artistic Work accorded by

the provisions of this law.” Copyright concerns “the creation of Literary and Artistic works such as books, music, paintings and sculptures, films and audiovisual works, dramatic works etc. Copyright protects original literary and artistic work which is creative expression of ideas.”

Unlike the 1914 Burma Copyright Act, this 2019 Copyright Law covers a wide range of works to be protected. The literary and artistic works protected under the 2019 Copyright Law are included under section 13 of the 2019 Copyright Law. They are as follows:

- 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.

As per the above scope of works protected under the 2019 Copyright Law, current protection included a wide range of works including the protection measures for the computer program, physical performances as well as performances broadcasted via non-traditional media such as via the media or the computer program. In addition, wired or wireless transmissions and computer program/ written code programs are being protected under the 2019 law, which was not used to be protected under the 1914 Burma Copyright Act.

Scope of Application to be Protected

Those eligible for the protections can be classified into four different themes according to section 12 of the 2019 Copyright Law. Firstly, under the case of a Literary and Artistic Work, the law protects the “Works of Authors who are citizens of, or reside in, the Union; Works first published in the Union or a Member State, or works published in a third country and also published in the Union within thirty days; audiovisual works and film work, its Producer has

his headquarters or habitual residence in the Union; and works of architecture erected in the Union and other artistic works incorporated in a building or other structure located in the Union.”

Secondly, under the theme of a Performer, the 2019 law protects the performer who is a citizen of or resides in the Union as well as a foreign performer(s) whose work is made in the Union and involves in broadcasting qualified under the protection of the Copyright Law.

Thirdly, the 2019 Copyright Law also protects a phonogram produced by the citizen of the Union; or if the sound is first fixed in the Union; or the phonogram produced by a non-citizen or non-residents, but whose work is first produced in the Union or produced in the Union within the 30 days of the first production elsewhere. Lastly, under the theme of Transmission, the 2019 law protects the transmission work disseminated by an organization with its headquarters residing in the Union or an individual residing in the Union.

By looking at this, one can conclude that this 2019 Copyright Law of Myanmar expands the scope of copyright protection not only at the domestic level but also at the international cross-border level by protecting foreign works produced from member states. This is evidence of the new law’s attempts to align with international copyright protection across cross-borders.

Protection of Moral and Economic Rights

Under the Berne Convention, copyright provides both economic rights and moral rights. Economic rights resonate with the owners’ rights to enjoy financial reward from the utilization of their work by others while moral rights grant the owners to authorship the rights of the work and to object to any attempts that will distort or modify the work.

Under section 82, anyone who infringes the copyright by using the work for commercial purposes without the authorization of the owner shall be sentenced to imprisonment up to 3 years or a compensation fine at least Ks. 1,000,000, or both. According to section 84, anyone who wrongfully issues or instructs to issue copyright or related rights registration certificate or who wrongfully records or instructs the copyright or related rights registration can be sentenced to up to 1-year imprisonment, a fine up to Ks. 2,000,000 or both. Repeated offences after being sentenced under section 82 can be punishable up to 3-10 years imprisonment with a fine up to 10,000,000.

Establishment of Intellectual Property Rights Court

One significant factor in this 2019 Copyright Law is the establishment of the Intellectual Property Rights Court directed under Chapter 20, Section 63 of the new law. Both

civil or criminal related proceedings can be heard and decided by the appointed judges at this court regarding the matters on intellectual property rights according to section 63(a).

According to sections 73 of the 2019 Copyright Law,

- a. Any Rights Owner aggrieved by a Copyright infringement may apply to an Intellectual Property Rights Court to take action according to sections 74 and 75.
- b. Any Rights Owner aggrieved by a Copyright infringement may apply to an Intellectual Property Rights Court to take action according to civil and criminal procedures.

According to section 74 of the 2019 Copyright Law,

- a. An Intellectual Property Rights Court may, with regard to an application made according to section 73 sub-section (a) relating to the infringement of Copyrights or Related Rights, pass any of the following provisional orders as a remedy in civil procedure –
 1. order prohibiting the import into the country of items that infringe a Copyright or Related Right, irrespective of their customs clearance;
 2. order to maintain evidence with regard to a Copyright and Related Right infringement in its original form;
 3. order amending, revoking or confirming a temporary suspension ordered by the relevant customs department.
- b. An Intellectual Property Rights Court may request the following from the applicant to pass a provisional order –
 1. sufficient evidence that the applicant has an interest in the matter and his rights are being infringed or potentially infringed;
 2. submission of adequate security to prevent an abuse of the temporary action.
- c. The Intellectual Property Rights Court may, when taking temporary action in accordance with sub-section (a), instruct the applicant to provide further information in order to identify the items that are alleged to infringe a Copyright or Related Rights.
- d. The Intellectual Property Rights Court shall lift or make ineffective, without prejudice to section 75 sub-section (b), the provisional order made according to sub-section (a) of section 74 and sub-section (a) of section 75 upon a corresponding request from the applicant if no legal proceedings have been commenced within the period specified by the court or, if no period has been specified, after 30 working days from the date of the provisional order.
- e. An Intellectual Property Rights Court may order the applicant to pay reasonable and adequate compensation to the defendant for damages incurred due to the provisional order requested by the applicant if the provisional order is revoked or terminated by the Court

due to an act of omission of the applicant or if the Court discovers that the Copyright or Related Right is not infringed or potentially infringed.

According to these sections, the Intellectual Property Rights Court is given authority and responsibility to protect the copyright of the owner. Having a specific court body is benefic in the protection of the related rights because this involves both specializations of the field of interest and authority and mandate granted to that specific body. The specializations of the field of interest allow related professionals to engage in the case regarding intellectual property rights more effectively and efficiently. On the other hand, granting the authority and mandate to the specific body can enhance increased identification of the copyright-related cases, raise public awareness on this matter, and provide transparency and effective solutions to the copyright-related matters.

Formation of an Organization that Collectively Manages Copyrights and Related Rights and its Functions

As per section Chapter 19 of the 2019 Copyright Law, the law allows the establishment of collective organizations to manage copyrights, related rights, and their function. Under this law, those organizations will be granted managing and administration rights as outlined below according to section 62 of the 2019 Copyright Law:

The respective Organization that Collectively Manages Copyrights and Related Rights –

- a. shall arrange to promote the creation of Literary and Artistic Works.
- b. may act as a mediator with regard to the protection of the Copyright of Authors and Rights Owners and Copyright violations.
- c. may accept Literacy and Artistic Works or related works, Performances or Phonograms entrusted by Authors or Copyright Owners, collect equitable remuneration from users, and apportion the remuneration among Authors and Copyright Owners;
- d. may collect and maintain, with the consent of the Author or Copyright Owner or Related Rights Owner or by purchasing, Literary and Artistic Works, Performances and Phonograms so that they do not disappear;
- e. may obtain and give assistance from and to foreign organizations that collectively administer Copyright and Related Rights matters, international organizations and regional organizations;
- f. shall comply with the rules, regulations and directives issued by the Ministry, relevant Ministries and Agency.

Other Major Differences in Terms

Regarding Terms, section 17 of the 2019 Copyright Law, expands the timeframe of economic rights of a copyright owner from 30 years (as per the 1914 Act) to 50 years after the death of the author. This 50-year protection term applies only to the work of the author (50 years after the death of the author) or joint authorship (50 years after the death of the last remaining co-author), audiovisual work (50 years after the dissemination time of the work) or cinematographic work (50 years after the public dissemination of the work), work published anonymously or under a pseudonym (50 years after the public dissemination of the work or after the date when the author is revealed), or government work (50 years after the calendar year of the first public-published year). However, for the Work of Applied Art, the economic rights will be protected only for 25 years from the original making time of the work.

CONCLUSION AND RECOMMENDATION

Intellectual Property, IP derives from the people's creative minds and thrives on the related culture and economic life for betterment. IP plays a vital role in the socio-economic life of different nations worldwide, and thus, its importance is highly recognized and protected by many national and international laws. Copyright, one of the important branches of the IP rights, is the right of the creator to its artistic and literary work that not only makes the society's culture and socio-economic status prosper but also provides economic and moral benefits to its owners once the copyright is properly protected under the existing national law.

Many international treaties and organizations have attempted to set up guidelines and cross-border protections such as outlined in the Berne Convention, the World Intellectual Property Organization Copyright Treaty (WCT), the Beijing Treaty and the TRIPS agreements. However, actual protection of the creator's work derives from the establishment of effective and mandated law at the national level which guarantees the copyright of the owner by aligning with feasible and applicable rules and regulations from international instruments.

Despite the long-term existence of the Burma Copyright Act in Myanmar stipulated in 1914, there existed limitations in terms of a need to deal with many audiovisual works and computer programs, which are the result of modern creations. To offset this, the 2019 Copyright Law was recently promulgated. This new law has brought many significant changes to the scope and implementation framework of copyright and related rights protection for the citizens of Myanmar. First, major changes are translated into an expansion of the scope of work that the Copyright Law will protect such as an inclusion of a wide range of works including computer programs and many new forms of audio-visual works under the protection banner of

the 2019 Copyright Law. Second, the protection for the scope of application or persons has also been expanded, which is evident in the protection not only at the domestic level but also at the international cross-border level by protecting foreign works produced by member states. Third, the protection of moral and economic rights can be found in a well-planned punishment and compensation mechanism such as increased terms of imprisonment for more than one-time offenders. Fourth, the establishment of the Intellectual Property Rights Court provides more authority and mandate to a specific legal body to deal with copyrights matters. Fifth, the permission to find the collective management organization allows a more fluid and effective management mechanism on the ground to promote the people's awareness of copyrights matters and to manage better and administer those matters efficiently. Lastly, an increase in protection timeframe from the previous 30 years to the current 50 years after the death of the creator of literary and artistic work allows an enhanced right and economic benefits to the creator of the work. To sum up, current improvements in the 2019 Copyright Law of Myanmar will definitely bring both moral and economic benefits to the citizens of the country.

There are three essential recommendations for further improvement in copyright protection in Myanmar. First and foremost, the copyright protection terms can be extended from 50 years up to 70 years after the death of the author because some countries have already granted a longer period of protection for the authors. Next, as human creation advances over time with the changing development across the world, new forms of intellectual property may emerge. A good example could be the emergence of unfixed performance like live broadcasts and computer programs. Thus, the existing copyright law should be amended with those changing advancements. Finally, as inter-trade and socio-economic collaborations between nations accelerate, it is important for the country's copyright to adapt to the international copyright instruments when it is feasible and relevant. Only then, one's own citizens, and humankind in a broad sense, can benefit from cross-border copyright protection.

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