

Copyright System in Myanmar

The existing Myanmar Copyright Act was promulgated in 1914. Myanmar protects original literary, artistic, musical and dramatic works by the 1914 Copyright Act (India Act III of 1914). The 1914 Copyright Act began to come into force in Myanmar on the 24th February, 1914. Therefore, the 1914 Copyright Act is still the existing law, relating to copyright protection in Myanmar. The legal provisions contained in the Act are mainly based on the Copyright Act of the United Kingdom which was enacted in 1911. No registration procedure has been instituted in spite of the existence of this act.

In this Act, the provisions protected works, authorship and ownership of copyright, duration (term) of copyright, limitations, infringements of copyright, applications of copyright, Civil and criminal remedies, definitions and penalties are included. The current Copyright Act of 1914 does not prescribe copyright of other country to be recorded in Myanmar and copyright obtained in other countries can not be enforced in the country.

In fact, the Act contains only 13 sections with Copyright Act, act of the United Kingdom of Great Britain and Ireland, attached thereto as the First Schedule. Almost all of the provisions of the Act, with the exception of a few sections that deal with penalties, are provisions, which prescribe how to modify and apply English Act in Myanmar. Actually, existing Myanmar Copyright Act is not only old but also does not cover with the TRIPS Agreement.

In the Myanmar Copyright Act, the term "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form. Copyright is an intangible property and property right intended to protect the right of those who create works of various kinds. The area of copyright includes every production in the literary, scientific and artistic domain. Translation, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the Copyright in the original work. If the work is unpublished, to publish the work or any substantial part thereof. It also includes the sole right:-

- (a) to produce, reproduce, perform, or publish any translation of the work;
- (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work;
- (c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise;
- (d) in the case of literary, dramatic or musical work, to make any record, perforated roll, cinematography film, or other contrivance by means of which the work may be mechanically performed or delivered; and
- (e) to authorize any such acts as aforesaid.

Copyright shall subsist for the respective term prescribed in the Act, in every original literary, dramatic, musical and artistic work, if it was first published within the Union of Myanmar. There are also definitions for such expressions as literary work, dramatic work, artistic work, work of sculpture, architectural work of art, engraving photography and cinematography.

The term for which copyright shall subsist, except as otherwise expressly provided by this act, be the life of the author and a period of fifty years after his death. The exception to this provision is that at any time after the expiration of Twenty-five years from the death of the author of a published work, a person may reproduce it for sale if he has given the notice in writing of his intention to do so and has paid to, or for the benefit of the owner, copyright royalties for all copies of the work, calculated at the rate of ten percent on the selling price of each copy.

Terms of copyright differ from one another depending on the kind of work created. If it is a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who die last, whichever period is the longer.

In the case of a literary, dramatic, or musical work, or and engraving, in which copyright subsists at the date of the death of the author, but which has not been published, performed or delivered in public, before that date, copyright shall subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter.

Copyright in any work which has been prepared by or under the direction or control of any government department, belongs to the Government and subsists for a period of fifty years from the first publication of the work.

In the case of records, perforated rolls, and other contrivances by means of which sound may be mechanically reproduced, the term of copyright shall be fifty years form the making of the original plate from which the contrivance was directly or indirectly derived.

The terms of copyright in photographs is fifty years form making of the original negative form which photograph is directly or indirectly derived.

The author of a work, as a general rule, is the first owner of the copyright therein. There are exceptions to this general rule. In the case of engraving, photograph or portrait, where the plate or other original was ordered by some other person and was made for valuable consideration, then the person by whom such plate or other original work was ordered shall, in the absence of any agreement to the contrary, be the first owner of the copyright. And also in the case of the author in the employment of some other person under a contract of service or apprenticeship to make the work in the course of employment by that person, the person who employs the author shall, in the absence of any agreement to the contrary, be the first owner of the copyright.

Infringement of Copyright is doing anything, without the consent of the owner of copyright, the sole right to do which is by the Act conferred on him. Selling, offering for sale, hiring, distributing or exhibiting in public for the purposes of trade, importing for sale or hiring any work shall also constitute an act of infringement of copyright. It shall also be an infringement of copyright if a person for his private profit permits a theatre or other place for entertainment to be used for the performance in public of the work without the consent of the owner of copyright. But, using any work for private study, research, criticism, review, publishing an address of a political nature delivered at a public meeting, publication in a newspaper of a lecture delivered in public unless such a publication is not prohibited, publishing of printings, drawings, engravings or photographs of a work of art, permanently situate in any public place, reading or recitation in public of any reasonable extract from any published work, etc., will not be considered the infringement of Copyright.

If copyright in any work has been infringed, the owner of the copyright is entitled to all remedies by way of injunction or interdict, damages or accounts. In those cases the Specific Relief Act or the Law of Tort may be applied, depending on the nature of the case. However, after expiration of 3 years, there is no right to suit for infringement of copyright.

In addition to civil remedy, the owner of the copyright may resource to the court for taking criminal action against the infringer under the Myanmar Copyright Act. Chapter III of the Acts prescribes penalties, though they may not be supposed to be sufficient punishment for the offense in the present day situation, for the following offences:

- (a) Knowingly making for sale or hire any infringing copy of a work in which copyright subsists;
- (b) Knowingly selling or letting for hire or by way of trade exposes or offers for sale or hire, any infringing copy of any such work;

- (c) Knowingly distributing infringing copies of any such work, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright;
- (d) Knowingly by way of trade exhibits in public any infringing copy of any such work;
- (e) Knowingly importing for sale or hire into the Union of Myanmar any infringing copy of any such work;
- (f) Knowingly making or having in possession any plate for the purpose of making infringing copies of any work in which copyright subsists;
- (g) Knowingly and for his private profit causing any such work to be performed in public without the consent of the owner of the copyright.

For infringement of copyright in television and video, there is a specific Law entitled "The Television and Video Law" which prescribes penalties for certain offenses.

In addition, every suit or other civil proceeding regarding infringement of copyright shall be instituted and tried at the Supreme Court or at the Court of District Judge under section 13 of the Myanmar Copyright Act. The Court before which any of the foregoing is tried may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies be destroyed or delivered up to the owner of the copyright, or otherwise dealt with as the Court may think fit.

Although the act is still in existence, very few cases have been brought before the Court. The main reason for scarcity of cases relating to copyright is that the persons concerned with such disputes are reluctant to go to Courts of Law, which is a distinctive personal trait of most of Myanmar people. Almost all of such disputes are settled amicably by negotiations or conciliations; sometimes with the intervention of certain influential persons or bodies such as Myanmar Music Association (MMA), Writers and Journalists Association, Motion Picture Association, Myanmar Theatrical Association, Myanmar Traditional Arts and Artisans Association, Myanmar Photographers Association, Myanmar Academy of Arts and Sciences, Myanmar Computer Federation and Myanmar Computer Industry Association, Myanmar Federation Chambers of Commerce and Industry etc.

Currently, the only law for IP is underdeveloped and underutilized. The other general laws for protection the IP are not sufficient for digital copyright era; and even they are not active for those who want to secure their rights. Although it is existing law in our country, there are no legal proceedings in the Civil Courts. The existing legal provisions of Copyright Act are not very beneficial for the disputing parties, Due to the pervasiveness of pirated recordings in the market, it is needed a comprehensive anti-piracy programme to be developed by the relevant authorities. The programme should cover both enforcement as well as public education measures.

IPRs are a complex and, often, controversial matter. It is essential that the general public be made better aware the benefits from copyright and the importance of copyright compliance and protection. It is also required to strengthen the stakeholders including the officials of IP offices, copyright policy makers, and the judiciary and enforcement authorities in dealing with IP issues. As regards awareness raising, efforts should be made to identify a body in charge of educating the public on copyright.

Outreach efforts should also be made through media, such as television, radio, magazines and newspapers. Meanwhile, regular capacity building activities such as training program, workshops, seminars, should also be implemented to increase the knowledge and expertise of copyright stakeholders.

In the current situation Myanmar being not only member but also a founder member of WTO has an obligation to implement the provisions of the TRIPS Agreement. As Myanmar is classified as a LDC, its TRIPS obligations would only come into force in 2013.

In order to upgrade the current IP laws, the government established IP system by drafting a copyright law. The drafting process started on September 2004 by the Ministry of Science and Technology with the close cooperation of Office of the Attorney General. The draft new law is based upon the WIPO model law and in line with the TRIPS Agreement and Conventions and Treaties administered by WIPO. In the draft new copy right law consists of a section relating the collective management of rights. Currently, the concept of copyright and collective management of rights is not well known as well as accepted in the market place. It is necessary to establish a cost-effective and sustainable collective management organization for Myanmar and it should be take care on the development and implementation of a comprehensive, clear, consistent and sustained awareness and education campaign on copyright laws and the collective management of rights. A feasible study to establish a collective management organization is also needed.

Myanmar would like to request WIPO to give necessary support in capacity building, IP legislative, IP administrative infrastructure, and human resource development and in relation to the impending obligations under the TRIPS Agreement, in order to modernizing the intellectual property system of Myanmar.