

Copyright Protection in Myanmar

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Country's Background for European SMEs

Myanmar is an emerging market showing steady growth rates since the country set itself on a course of political liberalisation. Despite being one of the poorest ASEAN nations, the country's economy grew at around 8.5% in the 2014/2015 fiscal year, with economic reforms bolstering consumer and investor confidence. The service sector was the main driver of growth thanks to expansions in telecommunications and transportation. Myanmar is an emerging economy with a GDP of \$64.3 billion, which is attracting more and more foreign investments. Its 53.4 million strong population is mainly occupied in the agricultural sector. However, the garment and mining industries, as well as wood products also take up a significant part of the economy.

EU imports for Myanmar are dominated by the textile industry, accounting for nearly 80% in 2011, making it the 29th largest trading partner for the EU for clothing. Agricultural products also play a significant role in Myanmar's exports to the EU. EU exports to Myanmar on the other hand are dominated by machinery and transport equipment. EU exports to Myanmar have risen steadily since its increasing political liberalisation.

Copyright in Myanmar

Myanmar is not currently a signatory of the Berne Convention for the Protection of Literary and Artistic Works or any other treaty protecting copyright. However, in accordance with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), to which it has acceded, Myanmar is required to implement and comply with Articles 1-12, Article 19 of the Paris Convention and the terms of TRIPS by no later than 1st July 2021. Myanmar is now drafting IP laws such as the Copyright Law to ensure its IP legislation is more in line with the TRIPS.

Copyright in Myanmar is currently protected under the Copyright Act of 1914 (CA 1914). The CA 1914 contains only basic provisions related to the term of copyright and civil remedies for infringement. This means that CA 1914 is not well suited to dealing with modern copyright issues, such as computer programs or many forms of audiovisual works.

The duration of the protection for literature and, dramatic, musical and artistic work under copyright lasts the life of the author and fifty (50) years after his/her death. However, in any case where the sound can be mechanically reproduced, the original piece of work will only be protected for fifty (50) years after creation.

The CA 1914 only regulates domestic copyright issues providing copyright of original literature and dramatic and artistic work if: (a) in the case of a published work, the work was first published within Myanmar; and (b) in the case of an unpublished work, the author was a citizen of Myanmar or “within” Myanmar when the work was created.

This means that copyrights from other countries are not recognized in Myanmar and there are also no procedures for registering foreign copyrights in Myanmar making it thus very difficult for foreign copyright owners to enforce their rights in the country.

Draft Copyright Law (year 2015):

A draft version of the Myanmar Copyright Law has been published in summer 2015 and it is expected to come into force in the coming year. The Draft Copyright Law will then replace the current CA 1914.

The Draft Copyright Law will be similar to the modern copyright laws in many other ASEAN countries and international standards, also recognizing copyrights of every country that is signatory to the same treaty, convention or agreement relating to copyrights that Myanmar is signatory to. Also, works which are first published in a country which is membered to any international or regional organization related to a convention, treaty or agreement to which Myanmar is also a member, shall enjoy copyright protection in Myanmar. Such provisions are a reflection of Myanmar's obligations under the ASEAN Framework Agreement on Intellectual Property Cooperation.¹

Registration of copyright will not be compulsory under the new law, however it will be possible to voluntarily record copyright with the Intellectual Property Office of Myanmar. Once the registration is granted the Registrar will issue a certificate of copyright registration. Voluntary copyright registration is generally recommended as proof of ownership to increase chances to enforce copyright, as in many South-East Asian countries the enforcement authorities would require proof of copyright in order to initiate the enforcement process. It shall be therefore recommended once also available in Myanmar.

Works protected under the Draft Copyright Law will include²:

- Books, pamphlets, poems, novels, articles, computer programs and other writings;
- Addresses, lectures, speeches, sermons and other oral works;
- Dramatic and dramatic musical works, pantomimes, choreographic works and other works created for stage productions;
- Musical works with or without accompanying lyrics;
- Audiovisual works including cinematographic works;
- Works of architecture;

¹ Baker & McKenzie: <http://www.lexology.com/library/detail.aspx?g=c399bde4-62ec-4f68-adf7-ebcb69f8268d>

² Baker & McKenzie: <http://www.lexology.com/library/detail.aspx?g=c399bde4-62ec-4f68-adf7-ebcb69f8268d>

- Works of drawing, sketching, painting, carving, sculpture, engraving, mosaic, woodworks, pottery ware, terracotta, jewelry, handicrafts, costumes and indigenous textiles;
- Lithography, weaving, tapestry and other works of fine art;
- Photographic works;
- Textile designs;
- Illustrations, maps, plans, sketches and three-dimensional works related to geography, topography, architecture or science; and
- Works of traditional cultural expressions and expressions of folklore.

According to the Draft Copyright Law, in case of a copyright infringement, the copyright owner may pursue administrative action, civil action and criminal action.

Enforcement of Copyright

According to the CA 1914, infringement of copyright is currently actionable in criminal and civil courts. The owner of the copyright may be able to appeal to the courts to institute criminal proceedings against the infringer under the Act. Punishment with regards to infringement consists of a fine not exceeding Kyats 500 (approximately EUR 0.38), but this is expected to increase. Making or possessing plates for the purpose of producing counterfeit copies shall be punishable with a fine, which is also up to a maximum of Kyats 500 (approximately EUR 0.38). For any subsequent offence the penalty is imprisonment for up to one month or a fine to a maximum of Kyats 1,000 (approximately EUR 0.76), or both.

In Myanmar no specific mechanisms exist for search, seizure and disposal of property relating to copyright. However, the general provisions of the Criminal Procedure Code relating to search, seizure and disposal of property can be applied. Sections 101 – 103 allow for any search to be made in the presence of at least two witnesses who are respectable inhabitants of the locality and will be required to sign the list to attest to its accuracy. The proprietor of the place searched may be present during the search.

It should also be also noted that there may be strategies to protect IP in lieu of traditional copyright rules and companies should determine whether some combination of trade mark rules and existing laws such as the Television and Video Law of 1996 may be used to protect certain rights.

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resources. Individual SMEs and SME intermediaries can submit their IPR queries via email (question@southeastasia-iprhelpdesk.eu) and gain access to a panel of experts, in order to receive **free and confidential first-line advice** within **3 working days**.

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