

DRAFT Myanmar copyright law

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Key points

- For the first time, foreign works in Myanmar are protected by copyright.
- Copyright protection does not extend to ideas, data, news of the day, the Constitution, laws and government regulations, court judgments.
- The definition of ‘reproduction’ means the making of one or more copies of a work in any manner or form.
- There are exceptions for private copying, temporary copies, quotation, teaching, libraries and archives, news of the day, computer programs, importation, broadcasting, persons with disabilities (including provisions relating to the Marrakesh Treaty for persons with print disabilities).
- In general use of an exception must be compatible with fair practice, it should not exceed the extent justified by the purpose, and the source of the work and name of the author should be included, where possible.
- International exhaustion applies to works imported by a natural person for personal purposes.
- In general the term of protection is life of the author plus 50 years. When the term of protection expires, moral rights still apply to the work in the public domain. Where copyright has not expired under the 1914 Act, the term shall be extended (from life plus 30 years) to the new term.
- For copies made legally under the 1914 Act, there is a two-year window within which those copies may continue to be distributed to the public.
- Technological protection measures receive legal protection. Beneficiaries of certain exceptions (temporary copies, teaching and broadcasting) may apply to the court to avail of these exceptions.
- Rules to establish collective management organizations are set out.
- Civil and criminal penalties for copyright infringements are introduced, and a new IP court is to be established.

Limitations and Exceptions to Economic Rights

Private copying

18. Studying, researching, critique, review of any literary and artistic work or synopsis of newspaper shall not be deemed as a violation of Copyright, where those are fairly used by a natural person exclusively for his own personal purposes. This exception does not apply in case of:

- (a) reproduction of a work of architecture in the form of building or other construction;
- (b) reproduction of the whole or of a substantial part of a book or of a musical work in the form of notation;
- (c) reproduction of the whole or of a substantial part of a database in digital form;
- (d) reproduction of a computer program, except as provided in section 24;

Temporary copies

19. Notwithstanding the provisions of sub-section (a) of section 12 [Economic and Moral Rights], the temporary reproduction of a work shall be permitted if all the following conditions are met:

- (a) the reproduction is made perceptible in the process of a digital transmission of the work or an act of making a digitally stored work or stored work in analog system;
- (b) it is caused by a person by way of authorization by the owner of copyright or of operation of Law, is entitled to make that transmission or making perceptible of the work;

Quotation

20. (a) Notwithstanding the provisions of sub-section (a) of section 12 [Economic and Moral Rights], the reproduction, in the form of quotation, of a short part of a published work shall be permitted without authorization of the author or owner of copyright provided that:

(b) The reproduction is compatible with fair practice and does not exceed the extent justified by the purpose.

(c) The quotation shall be accompanied by an indication of source and the name of the author, if his name appears in the work from which the quotation is taken.

Teaching

21. Notwithstanding the provisions of sub-section (a) of section 12 [Economic and Moral Rights], the following reproductions shall be permitted without authorization of the author or owner of copyright, provided that such reproduction is compatible with fair practice and does not exceed the extent justified by the purpose. The source of the work reproduced and the name of the author shall be indicated as far as practicable on all such copies:

- (a) the reproduction of a short part of a published work or newspaper, magazine, journal for teaching purposes by way of illustration, in writings or sound or visual recordings;
- (b) the reproduction, which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose,
- (c) the act of reproduction under sub-section (b) is an isolated one occurring, if repeated, on separate and unrelated occasions.

Libraries and archives

22. Notwithstanding the provisions of sub-section (a) of section 12 [Economic and Moral Rights], any library or archive whose activities do not serve direct or indirect commercial gain may, without the authorization of the author or owner of copyright, make a single copy of the work by reproduction in the following acts:

- (a) the literary and artistic work reproduced shall be published article, other short work or short extract of a work and where the purpose of the reproduction is to satisfy the request of a natural person,
- (b) an act of reproduction under sub-section (a) is
 - (1) satisfied by the library or archive that the copy will be used solely for the purposes of study, scholarship or private research;
 - (2) an isolated case occurring, if repeated, on separate and unrelated occasions.
- (c) where the copy is made in order to preserve and, if necessary, replace a copy, or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archive;
- (d) it is impossible to obtain such a copy under reasonable conditions.

News of the day

23. Notwithstanding the provisions of sub-sections (a), (f) and (g) of section 12 [Economic and Moral Rights], the following acts shall be permitted in respect of a work without the authorization of the author or owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable:

- (a) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public, of an article published in a newspaper or periodical on current political, economic or religious topics or a broadcast work of the same character;

Proviso: This permission shall not apply where the right to authorize reproduction, broadcasting or other communication to the public is expressly reserved on the copies by the author or owner of copyright, or in connection with broadcasting or other communication to the public of the work.

- (b) for the purpose of reporting current events, the reproduction and the broadcasting or other communication to the public of short excerpts of a work seen or heard in the course of such events, to the extent justified by the purpose;
- (c) the publication and reproduction in a newspaper, periodical or by other means, the broadcasting or other communication to the public of a political speech, a lecture, address, sermon, other similar literary and artistic declamation or other work of a similar nature delivered in public for the purpose of providing current information. Provided that such act shall be to the extent justified by the purpose and not for commercial purpose.

Computer programs

24. With respect to computer programs:

- (a) Notwithstanding the provisions of sub-sections (a) and (b) of section 12 [Economic and Moral Rights], the reproduction in a single copy or the adaptation of a computer program by the lawful owner of a copy of that computer program shall be permitted without the authorization of the author or owner of copyright. Provided that the reproduction or adaptation of a computer program shall conform to any of the following:
 - (1) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained;

- (2) for archival purposes and for the replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program is lost, destroyed or rendered unusable;
 - (3) for reproduction of a back-up copy of a computer program by the owner of the computer program solely for his own use.
- (b) no copy or adaptation of a computer program shall be used for any purpose other than those specified in sub-section (a), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

Importation

25. The importation of a copy of a work by a natural person for his own personal purposes shall be permitted without the authorization of the author or owner of copyright.

Broadcasting

26. Notwithstanding the provisions of sub-section (a) of section 12 [Economic and Moral Rights], any broadcasting organization may make, for the purpose of its own broadcasts and by means of its own facilities, an ephemeral recording of any work which it is authorized to broadcast. All copies of it shall be destroyed within six months of the making or within any longer term agreed to by the author. However, where such recording has an exceptional documentary character, one copy of it may be preserved in official archives according to section 95 sub-section (a). Broadcasting right relating to such exceptional documentary character shall be depended on the provision in section 34.

Persons with disabilities

27. (a) Notwithstanding the provisions of sub-sections (a), (c), (e) and (g) of section 12 [Economic and Moral Rights], authorized entity shall be permitted without the authorization of the author or owner of copyright to make an accessible format of a work, to receive a copy in such form from other authorized entity and to supply that accessible format, or copies of that accessible format to persons with a disability by any means, including by non-commercial lending or by electronic communication by wire or wireless means, when all of the following conditions are met:
- (1) the person or organization wishing to undertake any activity under this provision has lawful access to that work or a copy of that work;
 - (2) the work is converted to an accessible format, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to a person with a disability;
 - (3) supplying such copies for the exclusive use of beneficiary persons;
 - (4) the activity is undertaken on a non-profit basis.
- (b) A beneficiary person, or someone acting on his or her behalf including a primary caretaker or caregiver, may make an accessible format copy of a work for the personal use of the beneficiary person or otherwise may assist the beneficiary person to make and use accessible format copies where the beneficiary person has lawful access to that work or a copy of that work.
- (c) Authorized entity shall be permitted, without the authorization of the right holder, to distribute or make available for the exclusive use of beneficiary persons accessible format copies to an authorized entity in another Contracting Party of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.
- (d) Authorized entity shall be permitted, without the authorization of the right holder, to distribute or make available accessible format copies to a beneficiary person in another Contracting Party of Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled
- (e) The permit under sub-section (c) and (d) shall affect on prior to the distribution or making available the originating authorized entity did not know or have reasonable grounds to know that the accessible format copy would be used for other than beneficiary persons.