



HOW DOES THE COPYRIGHT LAW OF MYANMAR MEASURE UP TO EIFL'S CORE LIBRARY EXCEPTIONS CHECKLIST?

The Republic of the Union of Myanmar adopted a new copyright law in 2019 (Pyidaungsu Hluttaw Law No. 15, 2019. The 6th Waning of Kasone, 1381 M.E. 24th May, 2019).

It repeals a law enacted over a century ago, in 1914, that was based on the 1911 Copyright Act of the United Kingdom. The copyright law of 2019 is one of many new laws that are being introduced as the country shifts to democracy after more than 50 years of military rule. 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, for the first time, foreign works in Myanmar will receive protection.

The analysis below evaluates the copyright provisions of the 2019 Copyright Law against the EIFL “Core Library Exceptions Checklist.”

See also EIFL’s Summary of the key points in the law.

NOTES

The analysis is based on an unofficial translation of the new copyright law.

The information does not constitute legal advice, if in doubt seek local support.

We welcome comments and feedback.

March 2020

REVIEW

Collection Development

May a library buy lawfully produced books and other materials from another country for inclusion in its collection?

Yes, a library may include in its collection lawfully made copies it purchased in another country. The distribution right under section 18(c) includes importation (contained in the definition of distribution to the public in section 2(hh)), and the distribution right is subject to international exhaustion with respect to an authorized sale.

May a library lend a physical book/CD/DVD to a library user, or to another library?

Because the distribution right is exhausted after an authorized sale of a copy of a work, libraries are allowed to lend copies in their collections to library users or to other libraries. However, with respect to computer programs, audio-visual works, phonograms, databases, and musical works in the form of notation, the copyright owner has an exclusive right of rental to the public. The term “rental” is undefined, so it is unclear whether a library would rent an audio-visual work when it lends a DVD.

May a library by law lend an e-book to a library user?

There is no provision that specifically allows a Myanmar library to lend an e-book to a user. However, a library might be able to lend an e-book reader with a copy of a book on it (because this could fall within the scope of the exhaustion provision).

Support For Education and Research

May a library supply a copy of a work such as a journal article or book chapter, either in hard copy or electronically, to a person for research or private use, or to another library?

Under section 28(a), a library (or archive) may make a copy of “a part or extract [or excerpt]” of a published article or other literary or artistic work at the request of a natural person. The library must be satisfied that the copy will be used solely for the purpose of study, scholarship, or private research. Under section 28(d), libraries may supply each other, physically or by secure electronic transmission, with a copy of a work existing in their collections. An electronic file must be deleted immediately after printing a paper copy from an electronic copy of a work. A paper copy may be supplied by the receiving library to the library’s user.

May a library send and receive such copies across borders?

Nothing in the copyright law appears to prevent a Myanmar library from sending copies made under section 28(a) and (d) across borders. Such a distribution would not be a distribution “to the public.” Similarly, nothing in the copyright law appears to prevent a Myanmar library from receiving individual copies from overseas.

May a library create databases of collection material, including e-resources managed by the library, to facilitate text and data mining by researchers?

Section 26(b) permits making quotations from a work, provided that their making is “compatible with fair dealing,” and does not “exceed the extent justified by its purpose.” A library could argue that creation of a database to facilitate text and data mining—that is, to facilitate quotation—falls within the scope of the quotation exception. It is uncertain whether a court would be receptive to such an interpretation.

May a library provide copies of collection material for use in virtual learning environments to facilitate distance learning?

Section 27(a) allows the reproduction of a part of a published work for teaching purposes. Section 27(b) then provides that incorporating such copies in an “electronic curriculum/course packs in digital formats” is permissible if it is “hosted on a secure network...accessible only by enrolled students and their teachers.” [Another translation refers only to “electronic syllabuses”.] A library that is part of the educational institution likely would be permitted to participate in this course of conduct.

May a library digitize orphan works in its collection, and make them available online?

It is doubtful that a court would interpret the quotation exception as permitting the making the full text of orphan works available online.

Preservation and Replacement

May a library make copies of works in its collection in any form for preservation or back-up, and provide access to these copies?

Section 28(b) permits reproduction in order to preserve a work, if a copy cannot be obtained “under reasonable conditions.” In addition, a library can make a copy to replace a copy in another library’s collection that has been lost, destroyed, or rendered unusable.



May a library procure from another library the missing parts of any work in its collection?

Section 28(c) permits a library to make or procure a copy of a work if the work is incomplete or can't be acquired through general trade or from the publishers.

May a library web archive, i.e. preserve publicly accessible websites?

A library could attempt to argue that works downloaded from publicly accessible works are part of the library's collection, and thus could be preserved under sections 28(b) or (c). It is uncertain whether a court would be receptive to such an interpretation.

Persons with Disabilities

May a library make an accessible format copy of a work and provide it to a person with a disability?

Section 33 allows authorized entities to make accessible format copies and provide them to people with print disabilities. Section 2(kk) defines "authorized entity" as an entity that is "authorized or recognized" by the government to provide services to people with print disabilities. Accordingly, a library would have to receive this authorization or recognition in order to take advantage of Section 33.

May a library send and receive accessible format copies to and from other countries?

Section 33 allows an authorized entity in Myanmar to export accessible copies to another Marrakesh country, either to another authorized entity (Section 33(c)), or directly to a person with a print disability (Section 33(d)). Section 33(a) allows an authorized entity in Myanmar to obtain accessible copies from "any other authorized entity." This presumably means both domestic and foreign authorized entities.

Format Neutral

May a library make copies in any format, including digital copies?

The exceptions applying to libraries appear to be format neutral.



Safeguarding Exceptions in the Digital Environment

Are the exceptions granted to libraries in copyright law safeguarded from override by license terms?

Nothing in the law safeguards copyright exceptions from being overridden by license terms.

Where legal protection is granted to technological protection measures (TPMs), may a library circumvent the TPM to avail itself of an exception to copyright?

Section 45(a) provides that libraries may circumvent TPMs in order to make preservation and replacement copies under section 28(b). Additionally, authorized entities can circumvent TPMs in order to make accessible format copies under section 33. However, circumvention is not permitted when the works are made available to the public under license.

Limitation on Liability

Does the law protect librarians from being sued in the course of their duties?

The copyright law does not limit the liability of librarians for any copyright infringement they commit in the course of performing their duties.

A Flexible Exception

In addition to any specific library exceptions, are library activities also supported by a flexible exception such as fair use or fair dealing?

Library activities are not supported by a flexible exception.



Rate my copyright law

How does your copyright law support activities and services in your library? This scorecard is a handy way to rate your national law for core library provisions. Check how the law performs, and compare with other countries. Identify any gaps, or see where it's doing well. The questions on the scorecard should be read together with the *EIFL Core Library Exceptions Checklist*. Tip: Library activities and services may be permitted through specific exceptions, a flexible exception such as fair use/fair dealing, case law, or related law. If in doubt, seek legal advice.

	YES 2	PARTLY 1	NO 0
COLLECTION DEVELOPMENT			
May a library buy lawfully produced books and other materials from another country for inclusion in its collection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
May a library lend a physical book/CD/DVD to a library user, or to another library?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
May a library by law lend an e-book to a library user?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SUPPORT FOR EDUCATION AND RESEARCH			
May a library supply a copy of a work, such as a journal article or book chapter, either in hard copy or electronically, to a person for research or private use, or to another library?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
May a library send and receive such copies across borders?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
May a library create databases of collection materials, including e-resources managed by the library, to facilitate text and data mining by researchers?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
May a library provide copies of collection materials for use in virtual learning environments to facilitate distance learning?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
May a library digitize orphan works in its collection, and make them available online?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PRESERVATION AND REPLACEMENT			
May a library make copies of works in its collection in any format for preservation purposes or back-up, and provide access to these copies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	YES	PARTLY	NO
	<input type="text" value="2"/>	<input type="text" value="1"/>	<input type="text" value="0"/>
May a library procure from another library the missing parts of any works in its collection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
May a library web archive, i.e. preserve publicly accessible websites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PERSONS WITH DISABILITIES			
May a library make an accessible format copy of a work and provide it to a person with a disability?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
May a library send and receive accessible format copies to and from other countries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FORMAT NEUTRAL			
May a library make copies in any format, including digital copies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SAFEGUARDING EXCEPTIONS IN THE DIGITAL ENVIRONMENT			
Are the exceptions granted to libraries in copyright law safeguarded from override by licence terms?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Where legal protection is granted to technological protection measures (TPMs), may a library circumvent the TPM to avail itself of an exception to copyright?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LIMITATION ON LIABILITY			
Does the law protect librarians from being sued in the course of their duties?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A FLEXIBLE EXCEPTION			
In addition to any specific library exceptions, are library activities also supported by a flexible exception such as fair use or fair dealing?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Does your law measure up?

TOTAL SCORE	<input type="text"/>	TYPE OF LIBRARY	<input type="text"/>	LAW*	<input type="text"/>
COUNTRY	<input type="text"/>	DATE	<input type="text"/>	* VERSION/DATE	