



Limitations and Exceptions and the Problem of Infringement on Copyright: A Case Study of the Republic of the Union of Myanmar

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Authors' contributions

This work was carried out in collaboration between all authors. Author AMT designed the study, performed the statistical analysis, wrote the protocol and wrote the first draft of the manuscript. Authors AHK and MFDN managed the analyses of the study. Author DRC managed the literature searches. All authors read and approved the final manuscript.

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ABSTRACT

Exception and Limitations to copyright constitute a notion that lies at the very heart of the national legislation and international legislation. While copyright corresponds to a monopoly that society grants to authors over their creative work, exception and limitations to these exclusive rights appear to be a form of justification, allowing individuals, under certain conditions, to use a work without requiring authorization from the owner of the copyright, this is because there is always the need to balance the interest of the author and that of the society and as such countries makes exceptions to some situations where authors work can be used without necessarily asking for their authorization.

However, there is always the issue of infringement on copyright due to the fact that some individuals and organizations abuse the exceptions and limitations and this always creates misunderstanding hence the purpose of this article. The article, therefore, gives an overview of

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exceptions and limitations in Myanmar copyright law and present some instances of abuse of this exception which constitute infringement. It finally presents some remedies to the situation and makes some recommendations on the way forward.

The research methodology adopted for the study is the qualitative approach and thus the study mainly relied on secondary sources of information such as documents from the internet, journal articles, policy documents as well as all other important reading materials such as the dailies, press releases, news items and official reports.

The research concludes that adopting the licenses agreement system, setting up an independent tribunal to deal with copyright issues, adopting the fair use or free use principles, establishing of copyright managing body and by embarking on massive education and sensitization of the Myanmar people on copyright-related issues will be the best ways in dealing with the problem of infringement as far as copyright issue are concerned.

Keywords: Exception and limitations; author's right; Myanmar; copyright awareness; licenses system.

1. INTRODUCTION TO AUTHOR'S RIGHTS IN MYANMAR

Myanmar's existing copyright Act came into force in 1914 and due to the fact that the country is a former colony of Britain, most of the legal provisions that the Act contains are primarily based on the Copyright Act of the United Kingdom [1]. Myanmar's Copyright Act was adopted in Myanmar as Indian Copyright Act No.3/1911 which was enforced in Myanmar on February 24 1914. In fact, the Act was drafted and adopted in a localized design of the 1911 Copyright Act of the United Kingdom of Great Britain and Ireland. The words and expressions shall have the same meaning as the Imperial Copyright Act, 1911. Myanmar Copyright Act 1914 contains only 13 sections and attached thereto as the First Schedule.

Almost all the copyright legislation that exists in the country was promulgated nearly one hundred years ago in Myanmar and since then, there have been no significant amendments or additions to the existing Copyright Law in line with the changing situation of the international copyright legislation. As an original member of the World Trade Organization (WTO), Myanmar will be bound by the terms of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 2013. This implies that Myanmar has an obligation to give national treatment to all nationals of other WTO members upon acceding to WTO Agreement. Apart from the TRIPS Agreement standards, Myanmar has to consider the main objective of the ASEAN Framework Agreement which indicates that, members must ensure that the intellectual property laws and practices in the ASEAN countries will not obstruct the free flow of literary and artistic works, goods and services

throughout the ASEAN region, but will promote and facilitate such an exchange [2]. This therefore means that the existing intellectual property laws in Myanmar need to be reviewed and redrafted to be in line with the international and inter-governmental obligations however, in drafting this law Myanmar needs to take into consideration and ensure that provisions made in its domestic laws as far as intellectual property right is concerned do not conflict with either the ASEAN provisions on copyright or international conventions and treaties. There is, however, an ongoing process in Myanmar for enacting a new Intellectual Property (IP) laws including Copyright Law under the supervision of the World Intellectual Property Organization (WIPO) and although Myanmar's new IP laws are being drafted in an ongoing process, the provisions for the protection of the human intellect and innovations are to a large extent not at the center of this new draft. The Market-Oriented System has been practised in Myanmar since 1988 and been a least developed country, the country has to consider enacting new IP laws to suit the current and changing circumstances of the world especially in the area of protecting human intellect and innovations.

1.1 Concept of Myanmar Existing Copyright Act (1914)

According to Section 1(2) of the Copyright Act 1911, "copyright" means the sole right to produce or reproduce the work or any substantial part therefore in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the work or any substantial part thereof; and shall include 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
- (d) a dramatic work, by way of performance in public or otherwise;
- (e) in the case of a literary, dramatic or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered; and to authorize any such acts as aforesaid.

In the existing Myanmar Copyright Act, there are no provisions relating to the moral rights of an author. Even in the United Kingdom, moral right provisions are contained for the first time in the 1988 Copyright Design and Patent Act.

The UK Copyright Act 1911 provided as follows in s.19(1): Copyright shall exist to manage in records all the loopholes and other contrivances by means of which sounds may be mechanically duplicated or copied, in like manner as if such contrivances were musical works .

In *MaungNyi Pu v. East End Films*, case *MaungNyiPyu* was Proprietor of "A-1 Film Company" filed a suit against the East End Films Company claiming an injunction to restrain the East End Films Company for infringing the A-1 Company's copyright in a photograph of actress *Ma Than Tin* and also claiming Rs.100 by way of nominal damages [3].

It was held that the photograph of *Ma Than Tin* is a reproduction of the exhibit E-1. the plaintiff was favoured in this case by the authority of Section 1(2) of the Copyright Act (1911).

1.3 An Overview of the Terms of Copyright

Generally, the term for which copyright shall subsist, except as otherwise expressly provided by this Act is the life time of the author in addition to a period of fifty years after the author's 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 the published work, a person may reproduce it for sale if he or she has given written notice to the author with regards to

his or her intention to do so and has paid to, or for benefit of the owner, copyright royalties for all copies of the work, is calculated at the rate of ten percent on the selling price of each copy [4].

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 dies last, whichever period is longer.

In the case of a literary, dramatic, or musical work, or an 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 [5].

Copyright or any work, which has been prepared by or published 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 [6].

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 from the making of the original plate from which the contrivance was directly or indirectly derived [7].

The term of copyright in photographs is fifty years from the time the original negative form was made of which the photograph is directly or indirectly derived [8]. The person who passed the knob of the shutter of camera aperture is the copyright holder or owner of this particular photograph of which he or she has shot. It is very important to make it clear who owns the copyright of photographs before the job was assigned to the photographer by writing down the required conditions in the form of a contract stipulation.

With regard to the ownership of photographs, there was a conflict between *U Htein Win* and *Daw Nan EiEiZar* in 2008. Facts of the issue are *U Htein Win* took the photo of *SayarBogalayTint Aung* and used that photo in a book. That photo was taken at *Sayar Bo Galay Tint Aung's*house. *U Htein Win* gave that photo to *SayarBogalay Tint Aung* after that *Sayar Bo Galay Tint Aung* let *Wellness Health & Beauty* magazine and *Movie*

Melody (*Yoke Shin TayKabyar*) magazine to use his photo taken by *U Htein Win*. *U Htein Win* sent letters dated 6th February 2008 to the said magazines for using *SayarBogalay Tint Aung's* photos without asking any permission from him and using that photo as their magazine's photograph. *U Htein Win* said that if these magazines want to use that photo they must inform and acknowledge him but they absented to this and eventually it resulted in a disputed. *U Htein Win* asked the *Wellness* magazine to pay 40000 kyats as damages and 10000 kyats for compensation for using that photo. In this problem, *SayarBogalay Tint Aung* did not take any fees from *U Htein Win* for taking his photo. *Daw Nan EiEiZar* asked the view of Myanmar Photographic Association on this issue.

U PhayMyintOo, chairman of Myanmar Photographic Association replied that the copyright owner in this situation is *U Htein Win* so the permission for using the photo is needed. If *U HteinWin* took that photo in public places or in ceremonies and other people use that photo for non-profitable exhibition or photo show, the users would not need to ask permission to use that photo from *U Htein Win*. He also said that if this photo was arranged to task by *SayarBogalay Tint Aung* himself, *U Htein Win* needs to get permission from *SayarBogalay Tint Aung* and this photo must be used only in the place where *Sayar* permits them to be used.

Finally, *U PhayMyintOo* said that in this situation *Daw Nan EiEiZar*, the authorized editor of *Wellness* magazine, *KoKoHlaMyint*, the article writer and *SyarBogalay Tint Aung* will be liable to pay damages and compensation for using that photo without getting permission from *U Htein Win*. But *U PhayMyintOo* also suggested that this problem should be viewed from the social aspect as well. Eventually, *Wellness* magazine gave 50000 kyats and *Movie Melody* magazine gave 100000 kyats to *U Htein Win* only by mutual agreement, not by the consent of the Myanmar Writers and Journalists Association (MWJA) [9].

From the above, it can be seen that most of the copyright cases in Myanmar are finally decided not by courts of law but by the respective authorized organization in an amicable way. The people of Myanmar always look at the copyright cases from the social issue point of view and in most cases, the complaints are satisfied after receiving some compensation from infringers and this to a larger extent does not help in trying to find solution to the problem of copyright

infringement because just accepting little compensations from infringers will not deter them or others for engaging in such activities in the near future due to the fact that such punishments are not too strong to be a deterrent because infringers in most case will be able to pay such compensations without any difficulties.

2. RESEARCH METHODOLOGY

The methodology adopted for the study is the qualitative approach and the reason is that a qualitative approach is much suitable for explanatory and descriptive studies [10]. A qualitative approach to research enabled the researchers to begin the study with a philosophical assumption and it offers the opportunity for the researchers to bring on board their own perspective about the issue under discussion and finally create a platform for the use of interpretive and theoretical frameworks to further shape the study in order to arrive at an unbiased and logic conclusion Also adopting this approach enabled the researcher to dwell on the works of renowned scholars that have focused on discussing copyright infringement in Myanmar which consequently aided the researcher in obtaining a rich and in-depth insight into the research questions and legal problems under discussion [11].

The study primarily relied on secondary sources of information such as documents from the internet, journal articles, policy documents as well as all other important reading materials such as the dailies, press releases, news items and official reports.

3. INFRINGEMENT OF COPYRIGHT

According to the provision of Section 2(2) Copyright Act, a work shall also be deemed to be infringed upon by any person who

- (a) sells or lets for hire, or by way of trade exposes or offers for sale or hire, or
- (b) distributes either for the purposes of trade in any way that will affect prejudicially of the owner of the copyright or
- (c) by way of trade exhibits in public or
- (d) imports for sale or hire any work which to his knowledge infringes copyright or would infringe copyright if it has been made within the Union of Burma (Myanmar) in or into which the sale or hire, distributions, exhibition, or important took place [12].

Section 2(3) ruled that copyright in a work shall be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to use a person's work for performance in public without the consent of the owner of the copyright, unless he was not aware, and has no reasonable ground for suspecting, that the performance would be an infringement of copyright.

Infringement of Copyright simply refers to doing anything, without the consent of the owner of copyright who has the sole right over the work by the Act conferred on him. Selling, offering for sale, hiring, distributing or exhibiting in public for the purpose of trade, importing for sale or hiring any work shall also constitute an act of infringement of copyright. But there are also exceptions to the infringement of copyright such as 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 prohibited, reading or recitation in public of any reasonable extract from any published work.

3.1 Copyright Infringement in Universities

This issue relates to the use of copyrighted works in Universities without asking permission or receiving authorization from the copyright owner both from Myanmar and from foreign countries. In the E-TV programme, some teachers use copyrighted materials from websites e.g., maps or pictures without giving any acknowledge about the copyright owners. Perhaps they are not aware that websites have copyright and they need to ask permission from the authorized person of the website. Actually, most of the websites state contact mailing address or email address so as to make it easier for other people who want to re-use such works to make contact with the original owners before using these works. The reason why teachers are engaging in such act of infringement can be broadly be attributed to two main factors;

- the lack of copyright awareness and
- the cost of original books are quite expensive

Lectures and teachers are required to obtain permission from original authors before reprinting or using their works in order not to be sued for copyright infringement. Once the original author of a piece of work gives the consent to a teacher

or university to reuse or reprint his work for academic purpose, then there will be no legal liability on the part of the teacher if he uses such materials in teaching in the university or in a TV programme. For example, since 1997, *Innwa Bookshop* purchased school books legally under Master license System from "*Addison Wesley Longman*" in England. The imported items included books, video cassettes, CD-ROMs and these are legally reprinted in Yangon to be sold out lawfully in Myanmar.

Similarly, on 13th of August 2003, *Pyi Zone Publishing House* obtained reprinting permits from Academic (India) Publishers for the books which were titled "Dictionary of Engineering", "Dictionary of Civil Engineering" and reprinted them in Myanmar after acquiring the permission to reprint these two books in the Myanmar Press Scrutiny and Registration Department. If someone is willing to reprint the foreign originated books in an original form, he or she should ask permission from the original publisher in the foreign country [13].

3.2 Civil Remedies According to the Myanmar Copyright Act

Where copyright in any work has been infringed, the owner of the copyright is entitled to all remedies by way of injunction or indirect damages, accounts and otherwise, as may be conferred by law for the infringement of a right [14].

There was a case in Myanmar decided by the Supreme Court relating to this section (Section 6(1)).

In *U Hla Win and other vs. Daw Kyi Kyi @ DawYinWaeLwinit* was held on 4 November 1999 for the Civil First Appeal before the Supreme Court *Judge U Tun Shin*.

The facts of the case were that the author *Daw Kyi Kyi* wrote the novel "*HmineWae Chit Te' KhetThissa*" and made publication of it in 1981. Then she sold its manuscript to one, *DawKhin Than* for reproduction of it into a video feature for an amount of Kyat 10000. *DawKhin Than* resold it to the *Phowa Video Production* in 1994, but without the knowledge or consent of *Daw Kyi Kyi*. As the advertisements and news about the production of such video appeared in journals, *Daw Kyi Kyi* sent an objection notice to *PhowaVideo Production* and also submitted her objection to the Myanmar Film Federation. But

the production went on under a slightly changed name of "*HmineWae Chit Thaw KhetThissa*" and also made some changes to the theme as well as the text.

The Divisional Court in the exercise of its original civil jurisdiction decided in favour of the plaintiff (author) and ordered the defendants (*Phowa Video Production*) to pay Kyat 500,000 to the plaintiff as she claimed for damages to her copyright.

The Supreme Court Judge in his appellate decision reaffirmed the right of an author of a novel as provided by Section 2 (1) and Section (6) of the Copyright Act (1991). However, the Judge reduced the amount of compensation from Kyat 500,000 to Kyat on the grounds that, the amount of damages should be determined only in consideration of the author's work and on the basis of substantial damages.

Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defense alleges that he was not aware of the existence of the copyright in the work, the plaintiff is not entitled to any remedy other than an injunction or interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware, and had no reasonable grounds for suspecting that copyright subsisted in the work.

Where the construction of a building or other structure infringes or which upon completion would infringe the copyright of others, the owner of the copyright shall not be entitled to obtain an injunction or interdict to restrain the construction of such building or structure or to order its demolition [15].

An action in respect of infringement of copyright shall not commence three years after the infringement was made.

For the importation of copies which are made out of the Union of Myanmar or any work in which copyright subsists and in the case that the owner of the copyright gives notice in writing by himself or through his agent to the Chief Custom officer, as defined in the Sea Customs Act, that he is desirous that such copies should not be imported into the Union of Myanmar, such copies shall not be so imported, and shall be subjected to the provisions of this section, be deemed to be prohibited imports within the meaning of section 18 of the Sea Customs Act. (1878).

Before detaining any such copies, or taking any further proceedings with the intention of confiscation, the Chief Customs officer, or any other officer appointed by the Chief Customs authority on this behalf, may require the regulations under this section, whether as to the information, security, conditions of other matters, to be compiled with, and may satisfy himself, in accordance with these regulations, that the copies are such works are prohibited by this section to be imported.

The President of the Union may, by notification in the Gazette, make regulations, either general or special, respecting the detention and confiscation of copies, the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and confiscation are made.

Such regulations may apply to copies of all works, the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works.

The regulations may provide for the informant to reimburse the Government all expenses and damages incurred in respect of any detention made on his information and any proceedings consequent on such detention.

3.3 Criminal Procedures for Copyright Infringement

Chapter III of the Copyright Act (1914) prescribes penalties and specifies situations where an individual could be accused of copyright infringement. Below are the circumstances by which an individual could be accused of copyright infringement:

- (a) Knowingly selling or hiring 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 of such work, either for the purpose of trade or to such an extent that affect prejudicially of 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 private profit causing any such work to be performed in public without the consent of the owner of the copyright.

Every suit or other civil proceedings 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. (1914).

Besides the criminal proceedings under the Copyright Law for the infringement of copyright, there are three other related laws in Myanmar. These are

- (1) The Computer Science Development Law, 1996
- (2) The Television and Video Law, 1996
- (3) The Electronic Transaction Law, 2004

The Government promulgated the Computer Science Development Law in 1996 as SPDC Law No. 10/96. One of its objectives is to supervise the import and export for computer software of information. Section 7 (g) of the law relates to computer software and information which are not permitted to be imported and exported in order to protect the piracy of software. The Law provides punishment for the violation of this by section 36 with imprisonment for a term of a minimum 5 years to 10 years and a fine too.

The Television and Video Law which was promulgated on 29 July 1996 also provides penalties for copying a videotape for the commercial purpose.

Section 33 of the Law states that whoever commits the following act shall, on conviction, be punished with imprisonment for a term which may extend to 3 years or with fine which may extend to Kyat 100,000 or with both:

- (a) Distributing, hiring or exhibiting the copied television programme transmitted by the government department or government organization, for a commercial purpose:
- (b) Copying, distributing, hiring or exhibiting for a commercial purpose a videotape which has already obtained video censor certificate, without the permission of the

license holder of the video production business or videotape distribution.

The Electronic Transaction law was enacted on April 30, 2004. The scope of the application of this law is provided in section 4 (a) which indicates that the provisions contained in this Law shall apply to any kind of electronic record and electronics used in the context of commercial and non-commercial activities including domestic and international dealings, transactions, arrangements, agreements, contracts and exchanges and storage of information.

Among the provision for offences and penalties under this Law, Section 34 is mainly concerned with copyright infringement.

Whoever commits any of the following acts shall, on conviction be punished with imprisonment for a term which extends to 5 years or with fine or with both:

- (a) Sending, hacking, modifying, altering, destroying, stealing, or causing loss and damage to the electronic record, electronic data message, or the whole or part of the computer programme dishonestly;
- (b) Intercepting of any communication within the computer network, using or giving access to any person of any fact in any form of communication without the permission of the originator and the addressee;
- (c) Communication with any other person directly or indirectly with a security number, password or electronic signature of any person without permission or consent of such person;
- (d) Creating, modifying or altering of information or distributing of information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity or any organization or any person.

The 1962 Printing and Publishing Law exercised by Press Scrutiny and Registration department protect the rights of originators and authors as effective as and as good as those copyright laws that are enforced and practice in the world today. The printing and publishing law is as follows:

- (a) If a publisher wishes to publish a book, he or she must obtain the approval and permission from the originator or author of

the book in accordance with the existing law in Myanmar. Then only Press Scrutiny and Registration Department will commence the work of scrutinization process and other necessary issues related to the work. This proves the fact that this legal procedure carefully protects the copyright of the originator or author of the book.

- (b) For the translated literature it is not essential to obtain the approval of the originator of literature but only require the consent of the translator who performed the translation job.
- (c) If you wish to publish a book which had been published in the international book market in an original form, you need to obtain the permission or consent of both the international publisher and the original author. In this way, the copyright of international publishers and authors will be carefully and properly protected.

Although we have different legal provisions relating to copyright infringement cases, there are only a few cases which are brought before the court for adjudication. The main reason is that Myanmar people are reluctant to go to the Court of Law mainly because most people are of the view that the legal process for addressing copyright cases is too bureaucratic and time wasting. The copyright infringement cases are concluded by the intervention of certain influential persons or bodies such as Writers and Journalists Association, Motion Picture Association, Music Association, etc.

Myanmar Copyright Act has not undergone any significant amendments since 1914, so it is an old model and its remedies for both civil and criminal are not sufficient in content and are ineffective when compared with other countries. Public unawareness is one of the most important factors for the ineffective copyright management in Myanmar. At present, there are so many pirated CDs and DVDs which are sold in the market of which the original authors have not been accredited. Although Myanmar has proposed the enactment of its intellectual property law since 2013, such laws has not been enacted till date and it is important to have such laws as soon as possible for the economic and social development of the country. No investors will come and do business in a place where there is not sufficient protection of IP rights and this explains the main reason why Myanmar should take the necessary steps in ensuring that IP

rights are protected so as to attract investors all over the world.

3.4 Exceptions to Author's Rights in Myanmar

Section 2(1) (i)-(vi) of the Copyright Act sets out six specific circumstances as exceptions to copyright infringement:

- i. The first relates to 'fair dealing' with any work for the purpose of private study, research, criticism, review, or newspaper summary.
- ii. The second exception applies to artistic works, where an artistic work in the form of a 'mould, cast, sketch, plan, model, or study' can be used in other works as long as it does not 'repeat or imitate the main design of that work'.
- iii. The third exception applies to the making or publishing of paintings, drawings, engravings or photographs of a work of sculpture or artistic craftsmanship.
- iv. Fourthly, the Act allows for the publication of 'short passages from published literary works for use by schools, 'provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged'.
- v. Publication in a newspaper of a report of a lecture delivered in public, unless it is stipulated to the contrary.
- vi. Reading or recitation in public by one person of an extract of any published works.

These exception provisions should be amended in line with the changing technology era so as to reflect the reality of the world we are now living in.

4. REMEDIES FOR DEALING WITH COPYRIGHT INFRINGEMENT

To begin with, Myanmar has to entrench and make the license system more strong and effective. The license agreement can be made between the copyright owner and user by giving royalty fee for a certain limit of time. "Compulsory" or "non-voluntary" license may be granted by the Supreme Court to serve the public interest in cases where the owner of the copyright, after the death of the author of the

work, has refused to allow reproduction of a published piece.

Secondly, a Copyright Tribunal should be set up in Myanmar to give effective protection to authors and owners of specialized piece of works that have been duly registered to them. Thus due to the immense issues of copyright infringements that occur on daily basis, there is the need to set up a tribunal that will deal with only issues relating to copyright so as to speed up the trial and judicial cases. This is important because as stated earlier, many people refuse to go to the court and file cases of copyright infringement because most of the people believe that the process is too bureaucratic and time-consuming and as such they will rather take any little compensation that the infringer give to them and settle the issue out of court so as to save time. This phenomenon, in the long run, does not help because once the infringer begins to feel that the punishment attached to infringement is not that severe, it will not deter him or her from staying away from such activities but if there is a tribunal that will try and jail people for copyright infringement, then it will serve as a deterrent to others. At the same time, legislators who are preparing to draft a new copyright law should also consider balancing the interests between authors/owners and nonprofit users.

Again Myanmar should introduce fair use or free use principles in its copyright legislation which will help to protect the right of authors as well as help in balancing the needs of the society in the area of conducting academic research work. Fair use and free principle are not the rights given by law to the users of other people's work but they are just to be used as a defence when a copyright owner sues for copyright infringement. It is balancing the right between the owner and user in the case of public interest only and not for profitable works. In other words, if there is an established tribunal to prosecute individuals for copy right infringements or if there are too many restrictions on the use of other people's work, it could create some sort of fear and panic and might not encourage others to make use of scholarly works in research which in the long run could retard development but if the fair and free use principles are used effectively, a balance could be achieved. The fair use principle should be observed strictly so that there will be no abuse of this principle and when needed the necessary royalties and compensations should be given to the original owners of the work.

Additionally, Myanmar needs to set up a copyright managing body to manage issues relating to copyright. It is an obvious fact that the management of copyright takes time and effort, so a collective organization needs to be set up to manage copyright. In the case of Japan, UK, the government does not manage copyright however; to follow the systems of those countries will be quite difficult for Myanmar as UNESCO mentioned in the "ABC of Copyright" due to the fact that Myanmar is at its infant stages both in development and issues relating to the management of copyright. The government needs to administer and supervise the functions relating to copyright and collective administration. In addition to the Central body, working committees should be formed to carry out the functions and duties in respect of copyright assigned by the Government from time to time. It must be emphasized that it will take quite a long time to implement effective copyright legislation in Myanmar and as a result, the Government should embark on the necessary measures as soon as possible to avoid any further delays.

Furthermore, the copyright management body which will be set up must be composed of the authors' lawyers and the lawyers of the authorized persons from the department concerned. Myanmar's copyright protection system is still in its infant stage and for that reason, the copyright management body should not be constituted by the authors alone. This is because it is important to get both the author and the authorize user to understand the terms and conditions of the agreement they are making and as such constituting a copyright management body that will comprise of both the authors lawyers and the lawyers of the authorized user will be the best way in reducing the likely misunderstanding that might arise as far as copyright infringement is concerned.

Last but not the least is the fact that there is the need to embark on massive education and sensitization for the people of Myanmar on issues relating to limitations and exceptions as well as issues surrounding copyright infringement and the likely punishment that an individual or organization will face in the event of infringement. Such education and sensitization are very important as it will create much awareness and enrich the knowledge base of the entire society on what the exceptions and limitations are as well as what actions constitute an infringement of copyright. The education will also encourage owners to boldly go and file suit against infringers'

ant the court and be rest assured that the tribunal or the courts will work expeditiously to get the case resolved and the necessary compensations given to them.

5. CONCLUSION

In conclusion, one can argue from the above that so far as there are exception and limitations on copyright issues, the problem of infringement is also to a large extent inevitable. However, by adopting, the licenses agreement system, setting up an independent tribunal to deal with copyright issues, adopting the fair use or free use principles, establishing of copyright managing body and by embarking on massive education and sensitization for the Myanmar people on copyright-related issues, the possibility of copyright infringement in the country is likely to be reduced to the barest minimum.

All countries need to protect not only its country's intellectual property but also that of other countries as well. By protecting its own and foreign copyrighted works in an effective manner, Myanmar has greater chances of receiving foreign direct investment and also can transfer advanced technology from other countries by having effective copyright legislation. Even though available data to a large extent does not support the view that the protection of copyright in a country can attract foreign direct investment, it must be noted that Myanmar as a developing country should be able to prove to the outside world that if a foreigner's copyright is infringed in any way, it will always be willing as a country to ensure that the necessary penalties that are due the foreigner as a result of the infringement will be duly given to him or her. In this way, Myanmar can win the trust and confidence of foreigners in the sense that foreign investors will be convinced that the country has instituted the needed measures to protect copyright property and in case of any infringement they will be given the necessary compensation that is due them and this could go a long way to attract foreign investors in the country,

General speaking, the internationally-recognized rule, which is also in the case of Myanmar, is that the author of a work is the first owner of the copyright therein. It has a few exceptions, such as in the case of contracts for making photographs or portraits, or contracts of service or apprenticeship. In these cases, in the absence of any agreement to the contrary, the employer becomes the copyright owner. Joint ownership of

copyright is also recognized if a work is produced by the collaboration of two or more persons whose contributions are not distinct from one another.

COMPETING INTERESTS

Authors have declared that no competing interests exist.

REFERENCES

1. Aye T, Schmahmann D, Finch J. The integration of Myanmar's legal system into ASEAN. *Sing. J. Int'l & Comp. L.* 1998;2: 579.
2. Galexia Pty Ltd. Review of e-commerce legislation harmonization in the Association of Southeast Asian Nations (ASEAN): Myanmar; 2013. (Assessed on 24th May 2018) Available:http://www.galexia.com/public/research/assets/unctad_asean_ecommerce_review_2013/unctad_asean_ecommerce_review_2013-MYANMAR.html
3. Braund J. *MaungNyi Pu? Plaintiff. v. East End Films? Defendant*; 1938.
4. Singhania A. Copyright Laws in India and Maintenance of a Welfare State. *Journal of Intellectual Property Right.* 2006;11:52.
5. Sasan NK. Rights of the author: Possible extensions under copyright law in India. *International Journal of Innovation and Applied Studies.* 2013;2(2):104-12.
6. Kumar H. Employer's copyright vis-à-vis author's right: An Unresolved Legal Dilemma; 2005.
7. Gilchrist J. Rights vesting under part VII of the copyright act 1968 and their interrelationship with the prerogative right of the crown in the nature of copyright. *Canberra L. Rev.* 2014;12:5.
8. James FE. The united kingdom copyright act of 1956. *Bull. Copyright Soc'y USA.* 1956;4:117.
9. U Khin MW. Copyright in Myanmar Since 1914. (Assessed on 26th May 2016) Available:https://www.accu.or.jp/appreb/10/copyr/pdf_ws0509/2_4_kin.pdf
10. Babbie E. *The practice of social research*, Belmont, CA. Wads-Worth; 2004.
11. Patton MQ. *Qualitative research*. John Wiley & Sons, Ltd; 2005.
12. Geyer S. *Determining originality in creative literary works*. Doctoral dissertation, University of Pretoria; 2005.

13. U Khin MW. Copyright in Myanmar Since 1914.
(Accessed on 26th May 2016)
Available: https://www.accu.or.jp/appreb/10_copypdf_ws0509/2_4_kin.pdf
14. Thwin K. Current status of the preparation for the accession to the Madrid System Myanmar.
15. Hendenkamp DA. Free Mickey Mouse: Copyright notice, derivative works, and the copyright act of 1909. Va. Sports & Ent. LJ. 2002;2:254.

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