

# INTELLECTUAL PROPERTY ODYSSEY: NAVIGATING THE COPYRIGHT DISPUTES

There has been a noteworthy development in the field of copyright in Myanmar. The Intellectual Property Department (IPD) under the Ministry of Commerce (MOC) and the State Administration Council have issued multiple directives related to copyrights. Our previous article on 9 November 2023 provided readers with valuable information on the establishment of Copyright Registration Rules and how copyrights work in Myanmar. The IPD has released several notifications and directives since then. This article aims to provide the latest insights on what to expect and be cautious of.

## **Establishment of Intellectual Property Courts Jurisdiction**

The Copyright Law of 2019 grants the Union Supreme Court of Myanmar the authority to establish Intellectual Property Courts (IP Courts) for handling criminal and civil cases related to intellectual property rights. On 27 October 2023, the Supreme Court issued an important ruling outlining the procedures and granting the relevant courts power to adjudicate copyright cases. This ruling came into effect on 31 October 2023, the same day the Copyright Law became operational.

## **Judicial Power for Copyright-Related Criminal Lawsuits**

According to the Copyright Law, criminal copyright-related criminal lawsuits are to be decided by IP Courts and judges authorized by the Supreme Court through notifications. These notifications give the following courts the jurisdiction and power to decide criminal cases related to copyright that arise from Chapter XXIII of the Copyright Law:

- a) The Courts of the Self-Administered Divisions/States and respective District Courts have been given the original criminal jurisdiction of the IP Courts to decide criminal cases under section 63 (c) of the Copyright Law.
- b) The High Courts of Regions and States have been granted the appellate jurisdiction to decide appeals and revision cases against any criminal judgements, orders, and decisions made by the Courts of the Self-Administered Divisions/States and respective District Courts under section 63 (d) of the Copyright Law.

## Judicial Power for Copyright-Related Civil Lawsuits

The Supreme Court has granted IP Courts the authority to adjudicate civil regular lawsuits, consider applications for provisional measures, address applications for ex parte orders of provisional measures, hear appeals against decisions made by the Intellectual Property Agency (which is an intra-departmental body overseeing appeals from the copyright registrar), and handle applications related to the suspension order of the Director General of Customs Department under the Copyright Law. The specifics are as follows:

- (i) According to section 63 (d) of the Copyright Law, the Yangon High Court has the authority to adjudicate appeal and revision cases against any judgments, orders, and decisions passed by the IP Courts in civil cases under the Copyright Law.
- (ii) The Kyauktada District Court has been granted the IP Courts' original civil jurisdiction and authority to adjudicate civil suits related to copyright infringements and applications for provisional measures under section 63 (c) of the Copyright Law.

Additionally, under sections 63 (c) and (e) of the Copyright Law, the Yangon Region High Court has been given the jurisdiction and power to adjudicate on appeals against decisions made by the Agency per Section 59 of the Copyright Law. It also has the authority to preside over appeals against suspension orders issued by the Director-General of the Customs Department under section 68 of the Copyright Law.

## Lawsuits under the Copyright Law

On 27 October 2023, the Supreme Court issued the "Procedures for Adjudicating Lawsuits under the Copyright Law" with the power vested under Section 101(a) of the Copyright Law. These procedures are to be followed when resolving lawsuits related to copyright infringement.

## Criminal and Civil Proceedings under the Copyright Law

When dealing with criminal cases related to Copyright Law, the IP Court will follow the Code of Criminal Procedure provisions. On the other hand, civil suits for infringement of intellectual property rights must adhere to the Code of Civil Procedure and Limitation Act provisions. Chapters 17 and 18 of the Copyright Law guide various issues such as cancelling copyright registration, appealing the Registrar's decision to the Agency, and challenging the Agency's decisions in the IP Court. If you wish to file a complaint, you must present clear arguments on copyright infringement, the amount of monetary damages claimed, and the calculation method used to arrive at the claimed amount.

## **Summons**

Once the IP Court receives a complaint, the plaintiff will be instructed to serve a writ of summons on the respondent. The plaintiff will bear the associated costs of serving the writ. A copy of the complaint will also be sent to the respondent along with the writ.

## **Affidavit Requirement**

The plaintiff must submit an affidavit confirming the timely delivery of the writ to the respondent. Failure to comply may lead to dismissal or the setting of a new deadline, with non-compliance risking case closure.

## **Foreign Respondents**

When summoning a respondent in a foreign country, the IP Court will adhere to the Code of Civil Procedure and relevant Supreme Court guidelines.

## **Evidence Presentation**

To prove a copyright infringement case, the plaintiff must show that they are the rightful owner of the copyrighted material. This can include authors, copyright owners, assignees, licensees, or legal successors. They must also demonstrate that the infringement has occurred, show the harm caused by it, and provide evidence of any damages resulting from it.

## **Parallel Proceedings**

In cases where the same parties are involved in a civil suit and an IP Court hearing, the original court may temporarily pause proceedings until the IP Court's examination is complete.

## **Registration Proof**

In copyright infringement cases, individuals who have registered their work must submit the original or certified copy of the registration certificate.

## **Court Orders**

The IP Court has the power to issue orders in copyright infringement lawsuits, which may include prohibiting the entry of infringing goods into the trade channel and removing or destroying such goods or equipment.

### **Compensation and Fees**

In the event of a violation of intellectual property rights, the IP Court has the authority to order compensation for any damages the right holder suffers. The compensation may be based on the damages sought, the benefits enjoyed by the violator, or a combination of both. Moreover, the court may require the violator to pay for any legal and attorney's fees incurred by the right holder.

### **Application for Provisional Measures**

The IP Court deals with civil miscellaneous cases for applications seeking provisional measures and ex parte orders under Sections 73(a) and 75 of the Copyright Law. The applicant must provide evidence to the IP Court when seeking provisional measures. For ex parte orders, proof of irreparable harm is essential. The applicant must serve a summons to the respondent and cover the expenses; failure to comply leads to dismissal or a postponed date. The respondent must submit objections within 15 days, or the case may proceed without a defence. The IP Court can instruct the applicant to submit cash security or a surety bond, and failure to comply results in application rejection. If the respondent applies for an amendment or repeal, the IP Court conducts a fair hearing. If the applicant doesn't initiate legal proceedings, the IP Court may revoke an ex parte order upon the respondent's request. If the IP Court revokes or terminates an order and finds no violation, orders for compensation may be issued. The IP Court may order compensation from the applicant's deposited cash security. The provisional measure remains valid until the conclusion of the Civil Regular Suit unless revoked or terminated by the IP Court upon the respondent's request.

### **Appeal to Intellectual Property Court against Agency Decision**

If an individual is unhappy with a decision made by an agency, they can file an appeal to the IP Court within 90 days of receiving notice. However, the appellant must have participated in the initial appeal. The IP Court's decision is final and binding on the Agency, and beneficiaries must be included in the appeal. The representative appointment must follow the Code of Civil Procedure and relevant laws. The applicant must submit the Agency's decision or a certified copy, along with supporting affidavits, to the IP Court within the given timeframe. If the submission requirements are met, the IP Court will initiate proceedings. The applicant must serve the writ of summons and documents to the respondent, and failure to do so may result in the application being rejected. The respondent must submit response letters with supporting affidavits before the hearing. With the IP Court's permission, the respondent may revise the response letter, including an accompanying affidavit. No new evidence is admitted unless the IP Court deems it necessary. The IP Court may allow additional evidence for recorded purposes. The application

will be dismissed if the IP Court upholds the Agency's decision. However, if the IP Court nullifies the Agency's decision, a copy of the IP Court's order revoking the decision must be sent to the Agency.

### **Application to challenge the Director General of Customs Department's Suspension Order at the Intellectual Property Court**

When a suspension order is issued by the Director General of the Customs Department, the IP Court may start proceedings under Section 68 of the Copyright Law to review the order. The applicant must fill out the application form, attach the suspension order and provide all necessary supporting documents. The IP Court's verdict is binding on the Customs Department, and the Director General and affected parties are named respondents. The applicant must record the case and serve the writ of summons to the respondents, covering all expenses. The applicant needs to provide an affidavit to the IP Court stating that they have served the writ of summons to the respondent within the specified deadline set by the IP Court. Failure to do so may lead to rejection. If instructed, the Customs Department submits evidence. The IP Court must modify, revoke, or affirm the suspension order within 30 days. If the suspension order is revoked, the IP Court's ruling is sent to the Customs Department.

### **Management of Exhibits**

During copyright infringement lawsuits, the IP Court has the authority to demand the submission of relevant exhibits. If these exhibits are extensive, the Myanmar Police Force, Customs Department, or an appropriate party may be tasked with storing them securely to prevent damage or loss. During legal proceedings, parties may be instructed to maintain these exhibits and may need to enter into a bond related to those exhibits using the Intellectual Property Form-8. According to Section 92 of the Copyright Law, goods serving as evidence can face measures such as confiscation, destruction, or other appropriate handling orders.

### **Enforcement of Decrees and Orders Issued by the Intellectual Property Court**

Decrees and orders issued by the IP Court under Copyright Law must follow the Code of Civil Procedure during enforcement. Relevant departments should collaborate with the IP Court as instructed during enforcement.

### **Addressing Copyright Violations**

In cases of copyright violations, any matters not specifically stated in the procedures will be bound by the provisions of the Evidence Act, Code of Criminal Procedure, Code of Civil Procedure, and other applicable existing laws as mentioned in Section 81 of the Copyright Law. Civil and criminal standard forms may be adapted for matters not explicitly covered in the procedures.

## Issuance of Copyright Application Forms

On 20 November 2023, the MOC issued a notification creating a comprehensive list of application forms for copyrights. This list includes forms for registration, amendment, withdrawal, issuance of certified copies, and various other purposes under the Copyright Law. Please find below the list of available application forms:

CR - 1	APPLICATION FOR REGISTRATION OF LITERARY OR ARTISTIC WORK
CR - 2	APPLICATION FOR REGISTRATION OF RELATED RIGHTS OBJECT
CR - 3	APPLICATION FOR AMENDMENT OR CORRECTION OF CLERICAL ERRORS AND OTHER ERRORS THAT MAY BE PERMITTED TO CORRECT INCLUDED IN THE APPLICATION
CR - 4	APPLICATION FOR WITHDRAWAL OF REGISTRATION APPLICATION
CR - 5	APPLICATION FOR ISSUING OF CERTIFIED COPY OF THE REGISTRATION CERTIFICATE
CR - 6	APPLICATION FOR AMENDMENT OR CORRECTION OF CLERICAL ERRORS AND OTHER ERRORS RECORDED IN THE REGISTER
CR - 7	APPLICATION FOR RECORD OF TRANSFERRING OF ECONOMIC RIGHTS
CR - 8	APPLICATION FOR AMENDMENT OR CANCELLATION ON THE RECORD OF TRANSFERRING
CR - 9	APPLICATION FOR CANCELLATION OF REGISTRATION
CR - 10	APPOINTMENT OF REPRESENTATIVE
CR - 11	APPLICATION FOR CHANGE OF THE REPRESENTATIVE
CR - 12	APPLICATION FOR TIME EXTENSION
CR - 13	APPLICATION FOR APPEAL

Are you seeking assistance with Myanmar's recent changes to copyright laws? Our law firm provides comprehensive legal support, including copyright registration, protection strategies, and advisory services to help you navigate the new laws effectively. Whether you require assistance with an application process or personalized legal advice tailored to your specific needs, our team of legal experts is available to assist you. We are committed to safeguarding your intellectual property rights in Myanmar's ever-changing legal landscape. Schedule a consultation today to discuss your copyright requirements.

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