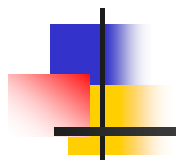


Current status of the preparation for the accession to the Madrid System (Myanmar)



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1. Introduction



As Union of Myanmar becomes an ASEAN member on 23rd July, 1997, we need to recognize and respect the protection and enforcement of intellectual property rights in each member state according to the ASEAN Framework Agreement on Intellectual Property Co-operation and also obliged to enhance ASEAN co-operation in intellectual property enforcement and protections.

Moreover, Myanmar joined to the World Trade Organization (WTO) as a member on 16 November, 1994 and thereafter also becomes a 176th of member-countries of World Intellectual Property organization (WIPO) on 15th May, 2001.

Like other members of the WTO, Myanmar has been obliged to abide by and implement the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), 1994.



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At the early of 19th century, relevant law as well as official rulings, recognizing and enforcing the principles of IP rights in Myanmar seem to be impressive and had timely developed to a substantial extent.

Among the existing relevant laws that can be enforceable on Intellectual Property Rights, the laws dealing with both criminal and civil action are mentioned in the following:

- The Code of Civil Procedure, 1808:
- The Penal Code; 1860:
- The Specific Relief Act, 1877:
- The Sea Customs Act, 1878:
- The Myanmar Merchandise Marks Act, 1889:
- The Code of Criminal Procedure, 1898:
- The Registration Act; 1908:
- The Myanmar Copyright Act, 1914:
- The Land Customs Act; 1924:
- The Myanmar Patents and Designs (Emergency Provision) Acts, 1945:



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- The Television and Video Law; 1996:
- The Computer Science Development Law, 1996:
- National Drug Law, 1996:
- Traditional Drug Law, 1996:
- Motion Picture Law, 1996:
- Electronic Transactions Laws, 2004:

2. The Myanmar Copy Right Acts

The existing Myanmar Copyright Act was promulgated on 24th February, 1914. In fact, the Act contains only 13 sections with Copyright Act, 1911 act of the United Kingdom of Great Britain and Ireland. Actually, existing Myanmar Copyright Act is not only old but also does not cover with the TRIPS Agreement.



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Terms of Copyright: Copyright in any work which has been prepared 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 production of the work.

Ownership of Copyright: In the case of engraving, photograph or portrait, where the plate or other original was ordered by some other person and was made for valuable consideration, then the person by whom such plate or other original work was ordered shall, in the absence of any agreement to the contrary, be the first owner of the copyright.

Infringement of Copyright: Infringement of Copyright is doing anything, without the consent of the owner of copyright, the sole right to do which is by the Act conferred on him. But, using any work for private study, research, 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 not prohibited, publishing, drawings, engravings or photographs of a work of art, will not be considered the infringement of Copyright.



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Remedies for Infringement of Copyright: If copyright in any work has been infringed, the owner of the copyright is entitled to all remedies by way of injunction or interdict, damages or accounts. However, after expiration of 3 years, there is no right to suit for infringement of copyright.

Trademarks: In Myanmar, we do not have any Act like the English Trademarks Registration Act, 1875, the English Trademarks Act, 1905. There exists the definition of a trademark in the Penal Code. Section 478 of the Code defines a trademark as "a mark used for denoting that goods are manufactured or marketed by a particular person".

Registration Act: The trademark registration system in Myanmar has been operating under Direction 13 of the Registration Act which explicitly provides that trademarks may be registered under section 18 (f) of the Registration Act. In case of any material changes supposing proprietor's name, device, address or covered goods services and so on to the registered declaration, it should have to be registered afresh.



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The Myanmar Merchandise Marks Act: There exists the Myanmar Merchandise Marks Act, which supplements relevant provision in the Penal Code. In section 6 of the said Act, penalty for applying a false trade description is prescribed. In such manner, penalties for selling goods to which a false trade description is applied and unintentional contravention of the law relating to marks and descriptions are prescribed in sections 7 and 8, respectively.

The Patents and Designs (Emergency Provisions) Act: Burma Patents and Design Act, 1939, was first introduced to Myanmar after separation of Burma from India in 1937. Then the Myanmar Patents and Designs Act of 1945 was promulgated but was not brought into force till the law was repealed in 1993.

In fact, both Myanmar Patents and Designs (Emergency Provision) Act, 1946 and Myanmar Patents and Designs Act, 1945 are defunct so that it may be said that there is presently no law or at least any law in operation on patents and designs. In these circumstances, new laws relating to IP are under consideration.



3. The New Copy Right Laws

The Television and Video Law: For infringement of copyright in television and video, there is a specific Law entitled "The Television and Video Law of 1996" which prescribes penalties for certain offences. Under section 33 of that Law, the offender without the permission of the license holder, may be punished with imprisonment extending up to three years or with fine extending up to Kyats 100,000 or with both.

The Motion Picture Law: The Motion Picture Law was enacted in 20th August 1996 to raise the Standard of Myanmar Motion Picture and preserve the Myanmar culture heritage. In section 13 of this law describe the function of the Myanmar Motion Picture Censor Board lead by the Myanmar Motion Picture Enterprise.

National Drug Law: The State Peace and Development Council enacted the National Drug Law on 30th October 1992 and formed the Myanmar Food and Drug Board of Authority.



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The Traditional Drug Law: The Traditional Drug Law was enacted by The State Law and Order Restoration Council on 25th July, 1996 in order to promote and develop traditional medicine and traditional drugs.

The Computer Science Development Law: As regards protection of software piracy no protection can be sought due to the lack of advanced technology. However, section 36 of the Computer Science Development Law, enacted in 1996 penalizes for imports or exports of any type of computer software or any information prescribed by the Myanmar Computer Science Development Council under section 6(g) of the said Law.

The Electronic Transactions Law: The provisions contained in The Electronic Transactions Law enacted on 30th April, 2004. This law shall apply to any kind of electronic record and electronic data message 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.



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The Science and Technology Development Law: In 1994, a new law entitled "The Science and Technology Development Law" has been enacted to cope with the changing situation and development in the market-oriented economy and to enhance its further development.

Section 4 of the said Law prescribes for the formation of the "National Council for Science and Technology Development" which is a high-level body headed by a responsible person as a chairman assigned by the Government and consisting of ministers or deputy ministers, heads of governmental departments and organization mainly responsible for the development of science and technology, and appropriate experts as a members.

Another important provision of the Law is to establish the "Myanmar Scientific and Technology Research Department", which is mainly responsible for the effective and successful implementation of the objectives of the Law.



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The Specific Relief Act: Under section 42 of the Specific Relief Act, any person entitled to any rights as to any property, including intellectual property, may institute a suit against any person denying, or interested to deny, his title to such right. The Court may in its discretion make therein a declaration that he is so entitled. In addition, the plaintiff, under section 54 of the said Act, may also claim a decree for a perpetual injunction.

The Code of Civil Procedure: In the settlement of disputes relating to Intellectual Property infringements, Civil Procedure Code plays an important role in Myanmar. Under the said Code there are some effective procedures for the right decision and speedy disposal of the suits.

Under Order 8, Rule 5 of the Civil Procedure Code, every allegation of fact in the plaint, if it is not denied specifically or by necessary implication, or stated not to be admitted, in the written statement of the defendant, shall be deemed to be admitted, except as against a person under disability.



4. Conclusions

The Government and the people of Myanmar are endeavoring and exerting their best efforts for all-round development of the country. The protection to intellectual property rights is given great attention as an incentive and encouragement in promoting investment and economic development.

Laws on intellectual property must be comprehensive and transparent and must contain sufficient provision to ensure effective mechanisms to convince investors that their rights are safeguarded and protected.

Myanmar, as a member of WTO, also abides by the provisions of the relevant treaties of such organization, in particular the TRIPS Agreement and the ASEAN Framework Agreement on Intellectual Property. As a result, all draft laws have to be reviewed and redrafted so as to ensure compliance with international and inter-governmental obligations of Myanmar.

The enforcement mechanism of the foregoing laws does not cope with the norms and standard provided in the TRIPS Agreement, Myanmar has been endeavoring for drafting and in enacting new laws on intellectual property.



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Several discussions on these drafted IP laws had been done with Prime Minister, Ministers, IP Lawyers, IP related organizations including NGO, Private Enterprises, Industrial Zones and the concerned from different sectors. WIPO offered Myanmar IP Lawyers to come to Geneva for discussion on those laws in May, 2005. In August, 2005, WIPO sent an expert mission for legislative advices on the drafted Myanmar IP laws.

According to the WTO Press no. 424, all Least-Developed Countries have been given an extension until 1 July 2013 to provide protection for Intellectual Property Rights under TRIPS agreement. In Myanmar, Intellectual property system is not well-developed and there is no Intellectual Property Office until now.

Its byelaws such as rules, procedures and others necessary measures have to be followed up, so also establishing necessary infrastructures, training officials and staffs as well as educating the public who will deal with the subject matter. We also hope that in the future there will be more contact and close cooperation between Myanmar and WIPO.



Thank you for your attention