

IP
ALERT

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Myanmar's Parliamentary Legislative Committee Debating New Intellectual Property Laws

The current Intellectual Property Regime in Myanmar

The current Intellectual Property (IP) regime is archaic as it has not kept up with developing economic trends and legal principles. The current IP regime is based on the first-to-use principle. Trademark registration under the Registration Act 1909 does not prove ownership of the mark in the event of a dispute, but only proves that the mark has been used in Myanmar. Currently, there is no comprehensive legislation that deals with trademark infringement. Trademark infringements are, at the moment, prosecuted under a myriad of laws such as the Penal Code, the Merchandise Marks Act, the Specific Relief Act, the Code of Civil Procedure, etc.

The current Copyright Act 1914 is also mainly relevant to local copyrights. Exclusive protection for foreign copyrights is unavailable, as there is no President notification extending this statutory protection to foreign countries.

Problems with weak IP protection and enforcement

Weak IP protection and enforcement is an obstacle to the Government's efforts to attract foreign direct investment, and encourage growth among local businesses. For example, Japanese seasonings manufacturer, Ajinomoto, which recently opened a USD45 million plant in the Thilawa's Special Economic Zone, is facing significant IP challenges. Ajinomoto's president and chief executive officer, Takaaki Nishii, notes that expansion is risky due to prevalent low-quality counterfeit products in the Myanmar domestic market, which harm the company's brand.[1]

Counterfeit goods and illegal trade also have a negative impact on small local businesses. Speaking to The Myanmar Times, Dr May Pyae Sone Kywe, chair of the Myanmar Young Entrepreneurs Associates, said, "The pervasiveness of counterfeit goods in the market and theft of ideas are big challenges for small businesses. They have to compete with counterfeit goods which are cheaper than the original products".[2]

As such, it is evident that a more comprehensive and robust IP law regime is needed to support the government's push for economic development. In addition, Myanmar has an obligation, as a signatory to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), to implement IP legislation consistent with TRIPS.

2017 Draft IP Laws

The Government of Myanmar published the following draft IP laws in July 2017, which are currently being deliberated by Myanmar's parliamentary legislative committee:

- Draft Trademark Law
- Draft Copyrights Law
- Draft Patent Law
- Draft Industrial Design Law



The Ministry of Education (“Ministry”), which has been specially tasked with preparing these draft laws, has stated that the laws will be in accordance with TRIPS.

Here are some highlights of the new draft laws:

- **New IP Office.** The draft laws establish a new IP Office. Registration processes under the new laws are expected to be more efficient with the adoption of a computerized management system to deal with registrations, filing of applications, examination processes, publications, oppositions, cancellations, and refusals, etc.
- **Re-registration of existing trademarks.** When the draft Trademark Law comes into force, all trademarks, including those registered under the existing Registration Act 1909, must be re-registered under the new law.
- **Suspension Order against Counterfeit Goods.** The draft Trademark Law tasks the Customs Department with preventing counterfeit goods from being imported into, or exported out of, Myanmar. The Customs Department may exchange information, and coordinate, with the World Customs Organization and customs authorities from the other countries when doing so. Trademark owners may request the Customs Officer to issue a suspension order against the importation, or likely importation, or counterfeit goods into Myanmar.
- **Right of Civil and Criminal Action.** Trademark owners who suffered damage as a result of trademark infringements are also entitled to sue in civil or criminal proceedings.
- **Collective Copyright Management Organisations.** The draft Copyrights Law provides for the establishment of collective management organisations (“CMO”), with the approval of the Ministry. Such CMOs may represent copyright owners to administer their rights and pursue of any infringement actions.
- **Patent and Industrial Design Disputes.** Both the draft Patent Law and draft Industrial Design Law provide that in the event of a dispute between a rights holder and an alleged infringer, parties may settle the dispute through private negotiations. If parties are unable to come to an agreement through such negotiations, the rights holder may take civil action against the other party. Temporary injunctions may also be sought.

That said, it is suggested that the revamp of the IP regime in Myanmar not stop at promulgating new laws that meet international standards. The Government must invest in the establishment of facilities and infrastructure to implement the new laws effectively and to support the development of IP protection in the country. In addition, more efforts should be made to raise awareness among the government officials, the private sector and the public on the importance of strong IP protection in a growing economy.

[1] Aung, Htin Lynn. “[Ajinomoto concerned with counterfeit](#)” The Myanmar Times 2 October 2017. Web 1 November 2017.

[2] Aung, Htin Lynn. “[Counterfeit goods and illegal trade deters investors, draws focus on lack of IP laws](#)” The Myanmar Times 6 October 2017. Web 1 November 2017.

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