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# **Experiences of authors in enjoying material and moral interests resulting from their creations in Myanmar**

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## **Abstract**

This paper is based on the evaluating on how authors in Myanmar have been struggling for their moral and material interests enshrined in Article 27 (2) of UDHR and how the government of Myanmar is trying to fulfill its obligations. Based on the belief that protection of authors' rights can be beneficial not only for the author alone but also for the society and the country make the research argues that the country which can protect the real author's rights alone can be a good development in the future because the livelihood of authors depends on the remuneration or royalty received. As a research methodology, the paper used the qualitative approach of the documentary analysis and in-depth interview simply because of the limitation of available documents written in Myanmar. This paper is limited to authors in book and music industry due to the initial study that these two areas are the most harmful creative industry in Myanmar. Altogether sixteen persons of authors were participated in the interview which has been done in Yangon. The findings have shown that the perception of different stakeholders is giving more harmful effect than perception of authors. Moreover, based on the feeling of hesitation and the social relation makes the author to do clearly written contract has been creating the difficult royalty sharing issues. Insufficient support of government fails to guarantee the just remuneration of authors.

## **I. Introduction**

The term “author” refers to the creator of any work eligible for copyright protection such as writers, painters, photographers, composers, choreographers, graphic designers, etc., Although an author has economic rights to control reproduction, public performance, broadcasting, publication, adaptation, etc., and moral rights to protect his dignity by controlling any kind of distortion, mutilation on his creation by copyright law, the intention of this paper is not to equate the author’s exclusive enjoyment of the said economic and moral rights. Rather, analyzing on author’s experiences on enjoyment of material and moral interests provided by Article 27 (2) of Universal Declaration of Human Rights 1948 (UDHR) which only intends to guarantee the just remuneration for intellectual labour which is important for author to enjoy the adequate standard of living is the core of this paper.

Artists and copyright owners in Myanmar can handle the issues with some laws such as Copyright Act 1914 and the Television and Video Law 1996 and mediation through associations<sup>1</sup> set up by the government. Nevertheless, the story of different types of commercial scales copyright infringements has been raised and the seizure of pirated CDs, DVDs has been shown by the local media quite often. Based on the literature review, the reasons are the ineffectiveness of existing laws, the lack of knowledge of authors on copyright and nature of contract. A few researchers in Myanmar had studies on the enforcement procedure of copyright, criminal and civil litigations to protect copyright piracy.

But, there is no research on the knowledge of authors on copyright and contract and how much those infringements have particularly impacted on authors’ livelihoods is unclear. Based on the belief that protection of authors’ rights can be beneficial not only for a group of authors alone but also for the society and the country make me argue that the country which can guarantee the author’s rights alone can be a good development in the future particularly while ASEAN is preparing for the free movement of goods, services for the economic integration. (IPR helpdesk: 2016) Without proper guaranteeing on their livelihood which is necessary to support their family and their lives to enjoy basic human needs basic human rights such as the right to just and favorable remuneration (Article 23 (3) of UDHR) and the right to an adequate standard of living (Article 25 (1) of UDHR), the authors cannot concentrate on creating new things.

Meanwhile, taking into account of author rights protection through human rights framework which guarantees just remuneration to the author without limiting the use of

public is more compatible for Myanmar due to being least developed countries. Thus, the objective of the research is to find out any difficulties and possible solution for author to enjoy their rights provided in Article 27 (2) of UDHR. To reach the objective, the paper evaluates on-

- (1) How do authors, particularly authors in music and book industry in Myanmar have been struggling for their enjoyment of moral and material interests?
- (2) How the government of Myanmar is trying to fulfill its obligation?

The study used qualitative design based on the documentary analysis and data collected via in-depth interview done in May 2016 with sixteen respondents. Due to the limited time, the research focused on authors from music and book industry which was the most impacted industries by literature review. Accessible to the official documents from government are limited. The code number used in the paper is GC (group of composers) and GW (group of writers from book industry).

The paper is divided into five sections. Underlying causes of infringements are the section which is immediately followed after this section to analyze whether the knowledge of authors on copyright and contract impact on the material interests. The third segment is about the impact on material and moral enjoyment of authors and struggling for their rights. The fourth section is analysis on government's support on author rights protection, and conclusion is the last section.

## **II. Underlying causes of infringements**

The common infringements which directly harm the economic rights of authors in the book industry are (i) production more than agreed number of books, (ii) printing many editions of long and short novels without informing authors, (iii) online piracy, (iv) adaptation to movies and videos and use of the same title and pen name (moral rights).

In music industry, infringements on (i) performing rights, (ii) broadcasting rights, (iii) synchronizing rights, (iv) piracy on physical material and online, and (v) moral rights are typical.

The underlying causes are due to (i) perception on copyrights and authors by different stakeholders and (ii) ways of business transactions used by authors.

**(i) Perception on copyrights and authors by stakeholders**

On analysis, attempting to contact the original authors from abroad to obtain the license of adaptation rights and asking permissions to use even one phrase of other authors in local and abroad<sup>ii</sup>, and giving rewards for using are showing that authors in both sectors know basic author rights. Only a few authors in both industries whether famous or amateur infringed moral rights which can be handled by mediations of Myanmar Music Association (MMA)<sup>iii</sup> and Myanmar Writer Association (MWA) respectively and any economic loss is paid. Thus, the perception among authors themselves does not harm much of economic interests.

However, misperception of other artists in the same industry or different industry creates more harmful impact on authors, particularly in the case of songwriters. Treating the songs as own property by singers based on the assumption that the song was getting famous because of them make the singers neglect to pay songwriters in performing rights which the songwriters has to enjoy 100 % of royalty. (GC3 &4) Before issuing the requirement of consent letter of the copyright owners by Myanmar Motion Picture Association (MMPA), most of the time, the songs was used in the movie without informing copyright owner. (GC2) Sometimes, the title of the song was used as the name of movie without getting consent after the song was bought to use in movie as playback. (Wine, July 2010) As experienced by GC5 very recently, songwriter names were unintentionally, but carelessly put on the tape, CDs and VCD by singers which creates tensions with the original songwriter as the public can assume the songwriter infringed moral rights of the other.

With respect to perception of business owners, being the essential role in publishing the creations, some book publishers and music producers misuse the position and economically exploit on authors without looking at the nature of copyright. By assuming themselves copyright owners, some journal publishers ask some amateurs to request permission to them to re-publish in the other journal or magazine. The author was informed that being sued can make the journal more noticeable by the audience when the author discussed for not doing this and gave warning. (GW8) Although songwriters have been explaining to KTV shops, restaurants and live show performance to obtain the license and pay royalty for using the songs, most of them are not doing copyright clearance by complaining troublesome for them. As experienced by GW4, some TV channels or video directors contacted only after they have adapted or have never contacted to writers for

adaptation to short video clips. The writer has to find out who uses his or her works by individually.

Though perception of non-commercial users can greatly impact on material interests of authors in a long run, authors are not interested in this issue due to the understanding on the situation of least developed countries.

## **(ii) Ways of business transactions**

According to the study, although written contract is the requirement to be valid for any assignment of copyright, the author who follows this requirement is hardly found.<sup>iv</sup> It is not because the author does not understand the nature of the contract because even the writers who have legal background rarely do the business transaction with written contract. (GC1, 2 & 3, GW2, 4 & 5) As mentioned by GW8 and GW6, written contract was used when dealing with foreign publishers for the adaptation of their works to other languages into Japan and Germany. It is just a matter of hesitation and culture which is the typical character of Myanmar and the fear of not to have the investor on the business. The methods which mostly used are trust-based and mutual understanding based business transactions.

### **(a) Trust-based**

Trust based is the method which mostly used by writers in the book industry. Under trust-based transaction, neither conversation for any terms and conditions nor royalty except the number of books is discussed by authors by assuming the publisher knows the assignment is only for first publication. Short novels are also sent based on trust. A few authors strictly do oral contract with some terms and condition such as to publish the books within 6 months or a year, the number of printed books must be 3000 books, assignment is only for one time, any materials used in printing must be returned to the author. (GW3, 5 & 8)

### **(b) Mutual understanding based**

Compared with the book industry the issue in music industry is more complicated. The mutual understanding based is the method mainly used. There is nothing either with singers or producers except one document submitted to MMA for scrutinizing on the use of song for recording in tape, CDs, and DVD for one time by producer. This

document becomes evidence for songwriters to claim the rights for the use of song other than the mentioned purposes. Let share the benefit mutually in the future is normal conversation in the business. (GC2 & 4)

### **III. Impact on the Enjoyment of the right of material and moral interests of author and their struggling**

As discussed in the previous sections, except the perception of authors itself, the perceptions of other stakeholders and the hesitation and the business transaction wrongly done by authors themselves make authors complete loss of money in some cases and partial loss in others.

#### **(i) Book Industry**

Based on the table 4.1, normally, writer is paid U.S 10 \$- 30 \$ for an article or a short novel. Basically, an author could write four to twelve articles in a month. (GW3 & GW7) Being paid for 30 \$ is very rare case. Thus, the average pay can be 20\$. The writer can earn 360 \$ per month for 12 articles if he is paid 30 \$. He could only earn 240 \$ if he pay is paid 20 \$. Big amount of royalties for short novels will be received only when their articles are adapted into other languages by the foreign publishing house. (GW6 & GW8) The royalty available for adaptation of short novels is 300 \$ - 500 \$. (GW5) The writers are not sure to be paid for re-publishing in the collection of articles and adapting to short video clips unless the writer pointed finger on the responsible persons.

For the long novel or book, the regular rate is the result of 15 % of the price of books multiply with the number of books printed. The standard number of books printed is 1000 books. The normal price of the books is within 3-5 U.S \$. (GW2, GW4 & GW5) Only books of a few famous authors which can be counted in numbers are printed 3000 to 5000 books. The maximum number of books written by the famous fiction writer in a year is six books. Thus, if the price of the book is 3 \$, he can receive royalty 450 \$ for 1000 books, if the price of the book is 5 \$, he could earn 750 \$. Based on the maximum number of 6 books which the author could normally write, the amount of royalty could earn by writer for is U.S 225-375 \$.

The royalty paid to the writer for the adaptation of long novel to movie or video is approximately 1000 \$. (GW6 & 8) The royalty which could earn by writers mainly depends on the perception and the honesty of publishers and other producers from movie

industry. Even some famous writers have experiences on not receiving for subsequent editions. (GW2, 5 & 8) One of GW2's books was reprinted already more than ten editions but he only received royalty for two times. Even he complained for giving royalty for the next editions, the reply of the publisher simply said that "the transcript was bought for the lump sum" which means the copyright was already transferred to the publishing house.

(GW2) Some writers find out evidence individually in order not to be exploited by publishers. (GW5 & GW8) They are persons who could not be influenced by publishers for many times and could earn full of economic and moral rights. Who understand the right very well become the activist for author's rights in the publishing industry. They individually try to protect their rights such as finding evidence (GW8), take legal action<sup>v</sup>, mediation (GW6), and raise voice through media (GW4). However, taking legal action is not popular method for writers due to the available compensation for damages are lesser than legal proceeding costs.

Other writers even do not know whether they are exploited by publishers. Those writers who moderate in practicing their economic rights are mostly silent to talk or silent to claim their rights to the publisher even they find out the suspicious actions of publishers. Some do not evenly check whether there is any differences in the number of books printed are over than the number informed to them. They accepted on whatever the publisher said as they do not want to destroy the good relationship with the publisher. So, the right to control on their economic rights is lost in this situation.

## **Music Industry**

In the music industry, songwriters are the persons who earn the least amount of money although they are the copyright owners due to the method of royalty sharing used currently which is resulted from the mutual understanding based economic transaction and due to lack of cooperation from the business owners. Generally, the royalty is mainly shared between music publisher and songwriter. The record label which has contract with singer, players and sound engineer has to take license for the recording of tape, CDs and DVD. In the case of using recorded tape, CDs and DVD, the royalty will be shared between the publisher and record label equally which means 50 % of each. Apart from using recorded songs, royalty has not been shared with the record label. (GC5)

Since songwriters could not practice the broadcasting rights from the state-owned Radio services and TV channels before 2007 (GC3), the perception of commercial



users on not obvious in the past. The less understanding on the nature of copyright make commercial users less collaboration with authors in giving license fees. When the first partially private owned City FM was launched in November 2001 (Agga, November 2002: p.43) the songwriters were requested to provide the songs with free of charge until the station can earn some profits. However, even after the FM station could earn annual profits of U.S 300000 \$ in 2003-4, the station still denied to pay the licensing fees to the songwriters raise. Almost 40 songwriters prohibited to broadcast their songs. Meanwhile, the 40 songwriters requested the Ministry of Information MMA to solve the problem. First, the YCDC gave pressure on 40 members by not letting post any advertisement of music album which the songwriter's name in it in Yangon Municipal Area. The pressure was lifted soon after the voice of songwriters was aired by DVB news agency. (GC3 & 5) In 2008, Mandalay FM was the first one who paid royalty to songwriters. Although songwriters received 25 % share previously, now they receive only 20 % share due to the logical complaint of producers who is now receiving 45 % of the share that broadcasting of FMs made them huge loss in sale declining of music albums. Now, they are receiving from almost ten radio stations which are currently running the service.<sup>vi</sup> Although they could not enjoy all of their rights fully, synchronizing rights could be guaranteed.

As mentioned by GC5, receiving royalty from the use of TV channels was in 2007 from Myawaddy TV channel owned by the Myanmar military which launched in 1995. It was also the initiative of GC5 who was acting a judge in the program called “melody world” televised by Myawady TV channel. If they re-sing the song, the songwriter alone will get the royalty. If they use the recorded songs, the royalty they paid will be shared among concerned parties.

Since 2010, the author has been struggling to enjoy the right of public performance which the author entitles to authorize live performances of a work, such as a play in a theater, or an orchestra performance of a symphony in a concert hall. (WIPO 909 (E), 11) 90 % of the live performances have been doing without paying any royalties to us although they were informed by us to do copyright clearance. (Aung, June 2016)

In the case of songwriter, instead of relying on music association, action taken by individually or the small group of songwriters who has common interests is getting replaced. The practice of collecting royalty from their rights is accompanied with the globalization and openness of the country. Comparing with the past, though songwriters

could enjoy some of their rights, guaranteeing for their rights are still far from the international practice.

The main issue is no differentiation between the rights of authors and subsequent rights holders (copyright owners) in the legal framework. Plus, not having the practice of written contract and not understanding the nature of copyright among artists makes the author difficult in enjoying their rights. Royalty of songwriters are needed to share with the players, producers and recordings.

With respect to moral rights, public apology in the newspaper or personally request for forgiveness is the method used by individual author who was unintentionally used the same title or words in their creation. If there is economically impacted on the original creator, the second comer usually transfer the related economic benefits.(GC5) Though, except the serious cases in which the moral rights infringer do not apology, most of the persons infringed are not mentioned in the media. Without using naming and shaming in the media has made the other infringers from creative industries infringe. (GC3)

As noted by Yu (2007), the phrase “material interests” used by UDHR have to be interpreted to “just remuneration” for intellectual labor. (Yu, 2007, pp-1084-1088) The authoritative guidance of CESCR’s Comment No. 17 restricts the protection of “material interests” to the purpose of enabling authors to enjoy an adequate standard of living”. Accordingly, the obligation of the States parties in this regard is “to respect and protect the basic material interests of authors resulting from their production, which are necessary to enable those authors to enjoy an adequate standard of living”.

Based on the interview, in the case of writers from book industry, except a few persons, no one can survive with their earning from writing principally to have adequate standard of living for himself and his family. Adequate standard of living in their context means having a brick house included TV sets and having car. Based on the study, only persons who dare to fight for their rights can have an adequate standard of living due to being paid for the subsequent editions and for the maximum number of books printed.

#### **IV. Analyzing supports of the government on authors’ rights protection**

Though Myanmar is not a fully member of ICESCR yet, general comment No.17 of CESCR is used as an authoritative guideline and yardstick to access the

Government's fulfillment on obligation. Respect, protect and fulfill are the three basic of discussion in the following section.

Abstaining from infringing and interfering with the enjoyment of material interests by the government's officials is required. Though there is no reported evidence to the media, suspicious supporting actions to the pirated producers and sellers such as giving information to escape from being caught are observed by GC3, GC4 and GC5. Even MMA could provide the exact information to the police during the two decades, there were not many cases which can be caught the owners though those physical materials were seized. Even being caught those illegal producers were fined with the amount which is not severe enough to deter future's crime. Only one case which can be brought to the court for monetary reliefs was "*Myanmar Music Association vs. Tun Naing*" (2013), which the defendant was charged to pay U.S 93,000 \$. Unfortunately, the defendant has been absconding. Moreover, retail sellers of pirated products become the victims of the anti-piracy action rather than the wholesale pirating business owners made the songwriters stop in active participating in the program. (GC5 & GC7)

Prohibiting the advertisement of the songs of songwriters in Yangon City area when royalties were collected from FMs in 2003-4 and pressuring not to take legal action on the business owners and some famous singers for infringing the performance rights of songwriters are also a kind of not respecting the rights. Which the government did not stand based on the copyright nature or the right side makes the composer difficult to deal with macro business group.

With respect to the laws, instead of updating the existing Copyright Act 1914 which maximum penalties is less than 40 Baht and one-month imprisonment, the government is trying to provide the new law by 2021 as it is the deadline for the least developed countries by World Trade Organization (WTO). Before that, the government passed the Television and Video Law in 1996 which is useful to suppress the illegal reproduction of the copyrighted physical materials to some extent by S. 32 which provides the punishment is up to 3 years imprisonment and approximately U.S 100 \$.

Besides, as a temporary measure, the government supported to set up some committees such as supervising committee, patron committee and scrutiny committee at MMA. (South-South Information Gateway homepage, 2012) Similarly, to solve the issue of using the song as playback, the government let the MMPA issue the notification which states

the requirement of consent letters of the related persons over the song when submit to the censor board under the MMPA.<sup>vii</sup>

However, if the artists who morally or economically infringed the rights of copyright owners are not followed the result of mediation will be put in the black lists which become unable to receive permission letter to produce movie or video or music album is the one good point of the existence of associations set up by the government. (Nyein, 2010:40)

Efficient raising awareness on copyright among artists is one of the requirements for the current situation. Although numerous trainings and workshops have been done in Myanmar with the support of World Intellectual Property Organization (WIPO) and opened to the public, the number of authors participated from both industries were extraordinarily limited due to the lack of information.

## **Conclusion**

It is difficult to see how much the current copyright infringement has impacted on author's material and moral interests with percentage or numerical number though it could generally see how authors have been struggling and they could not survive by suing the method of qualitative and in-depth interview. However, based on the above situation mentioned, the paper could provide some recommendations which can be useful for the government to improve the enjoyment of author's material and moral interests.

- (i) To provide some temporary measures to guarantee royalty including performance rights and collective management organization which can guarantee for songwriters and which can systematic functions before new copyright law is enacted,
- (ii) To provide some temporary arrangements which authors have to use contractual business transactions compulsory way,
- (iii) To do a leading role and support by responsible institutions of the government particularly on the copyright awareness in creative industry.

Thus, the result of this paper can be applied in the new framework for copyright which will be implemented by 2021 as a member of Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPs).

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## Notes

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- <sup>i</sup> Myanmar has five associations for the well being of artists in the creative industry. They are Myanmar Music Association, Myanmar Motion Picture Association, Myanmar Writer Association, Myanmar Journalist Association and Myanmar Performers Association.
- <sup>ii</sup> Myo Aung in his article named “*Literary and Artistic Copyright*” in 2006 noted that the translation of books named “*Thawka King Way Nay Naing Yay*” by famous author Tat Toe and “*Teaching of Lord Budha*” by Zay Yar Mg done by those two authors with the permissions of the original authors.
- <sup>iii</sup> Myanmar Music Association (MMA) was formed under the guidance of the Government as a non-governmental organization since 1991. Members of MMA are composers, music producers, music distributors, recording studio owners, music copiers, and musical machinery business personal.
- <sup>iv</sup> Section 5 (2) of the Copyright Act 1914 provides that “the owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations, and either for the whole term of the copyright or for any part thereof, may grant any interest in the right by license, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorized agent.
- <sup>v</sup> U Hla Win and other v. Daw Kyi Kyi alias Daw Yin Wae Lwin (1999), Burma Law Report (Civil)
- <sup>vi</sup> They are Myanmar Radio (National Services), Padamyar FM, Shwe FM, City FM, Mandalay FM, Cherry FM, Thazin FM, Pyinsawady FM and Bagan FM.
- <sup>vii</sup> Regulations by Myanmar Motion Picture Association, explanation by MMPA at the meeting held in MMPA’s meeting room on 26<sup>th</sup> August 2000. MMPA announced ten regulations which must be submitted to the video/Movie censor board. The first five out of ten regulations are directly related to the copyright over music. The person who wants to use music in the video, movie or music video must submit (1) the consent of composer; (2) the consent of the players; (3) the consent of the recording studio; (4) the consent of the copyright owner and (5) the permission of the Myanmar Music Association.