

Refusal of copyright registration in Myanmar: What are the reasons?

A copyright application in Myanmar may face various obstacle resulting in [refusal](#). A clear and deep understanding of reasons why a copyright application is refused is a good way to avoid and/or overcome it, saving time, finance and other resources as well as ensure a smooth process of copyright registration in Myanmar. KENFOX would like to provide below essential insights and details to help copyright holder prepare, ensuring a smooth copyright registration process in Myanmar.

1. Failure to meet territorial and qualification criteria (Article 12)

A work created beyond the scope of application under Article 12 will not be protected and refused registration in Myanmar. In detail, [Myanmar's Copyright Law](#) only applies to works and rights-holders based on “**nationality**”, “**residence**”, or “**place of publication**”. If a work or rights-holder does not meet these territorial or qualification criteria, the copyirhgt application could be refused. Article 12 specify only the works meeting the statutory requirements are eligible for protection in Myanmar, including:

- (i) Published or unpublished work of an author who is a national of, **or** has his habitual residence in Myanmar;
- (ii) Work first published in Myanmar **or** a work first published in another country and also published in Myanmar within 30 (thirty) days from the first publication, irrespective of the nationality or habitual residence of the author;
- (iii) Audiovisual work or cinematographic work of the producer who has his headquarters or habitual residence in Myanmar;
- (iv) Work of architecture erected in Myanmar and artistic work incorporated in a building or other structure located in Myanmar.

Example 1: An application for copyright registration is submitted for a literary work authored by an individual (e.g., US) who is neither a national of Myanmar nor has their habitual residence in Myanmar. The work has not been published in Myanmar or any other criteria that could bring it under the protection of Myanmar's Copyright Law.

Reason for refusal: Since the author does not have the necessary connection to Myanmar through nationality or residence, and the work does not fulfill any other territorial connection criteria, the application would likely be refused based on the scope of application provisions

Example 2: A book is first published in a country outside of Myanmar and the application for its copyright registration is submitted in Myanmar more than thirty days after its first publication. The author is a national of a third country and does not reside in Myanmar.

Reason for refusal: The application could be refused because the work was first published outside Myanmar and the application was not submitted within the thirty-day window that allows for [foreign-published works](#) to be considered under Myanmar's copyright protection. The lack of the author's national or residential ties to Myanmar further distances the work from qualifying criteria.

Example 3: An audiovisual work is produced by a company with its headquarters outside Myanmar, and the work is neither made available to the public for the first time in Myanmar nor within thirty days of publication in another country.

Reason for refusal: The audiovisual work does not meet the criteria of having a producer with headquarters or habitual residence in Myanmar, nor does it fulfill the publication criteria needed for protection. Hence, its copyright registration application could be refused

2. Failure to meet criteria of Originality and Copyrightability (Article 13)

For a copyright application to be accepted, the work must be “original” and fall within the categories of works that are protected under the law. Article 13 lists 12 categories of works eligible for protection under copyright law.

Lack of originality or falling into a non-protected category (such as ideas, procedures, news of the day, etc., detailed in Article 16) can also be a basis for refusal under the broader understanding of the law's scope.

3. Ineligibility for protection as derivative works (Article 15)

For a derivative work to be registered, it must add something new or original beyond the original work it is based on, such as a unique arrangement, adaptation, or compilation effort. The Registrar will assess the derivative nature of the work and whether it meets the criteria for being considered an original intellectual creation in its own right.

A derivative work as per Article 15 is not eligible for protection in case of (i) lack of originality and (ii) infringement of the original work's copyright, thus, the copyright application will be refused registration.

In detail, derivative works must constitute an "*intellectual creation*" due to the selection, coordination, or arrangement of their content. If a derivative work (e.g., a *translation, adaptation, or compilation*) lacks sufficient originality or creativity in how it reinterprets or reorganizes the original work, it may not meet the threshold for copyright protection.

In addition, a derivative work must not infringe on the copyright of the original work. This means that proper authorization or licensing must be obtained from the copyright holder of the original work to create a derivative work. If a derivative work is created without such authorization, it could be refused registration due to copyright infringement.

4. Non-protection categories/Ineligible works (Article 16)

Works that do not qualify for copyright protection. Article 16 of Myanmar's Copyright Law specifically outlines 06 categories of works and subject matters that are not eligible for copyright or related rights protection, including:

- (i) Ideas, Procedures, Methods of Operation, Mathematical Concepts, Principles, Discoveries, or Data;
- (ii) News of the Day or Miscellaneous Facts;
- (iii) Constitution and Legislation;
- (iv) Rules, Regulations, Bye-laws, and Government Issued Notifications, Orders, Directives, and Procedures;
- (v) Judicial Decisions and Orders, and
- (vi) Official Translations and Collections of Government Documents.

5. Ownership and authorship issues (Articles 22 & 23)

- **Original ownership of economic rights (Article 22):** Per Article 22, it provides that the author of a literary or artistic work is [the original owner of the economic rights](#) to that work. It details scenarios for joint authorship, works created in the employment context, and works commissioned or produced under contract, explaining how economic rights ownership is determined in these situations.

If there's ambiguity or dispute over who the true author of a work is, or if the economic rights have been legally transferred from the author to another entity (e.g., an employer or a commissioner), the application might be refused or require additional documentation. The law requires clear ownership for copyright registration, and any dispute over this fundamental aspect could impede the application process

- **Rights concerning author and his representative rights (Article 23):** Article 23 deals with the representation of the author, especially in cases where the author uses a pseudonym or is otherwise not immediately identifiable. It establishes the presumption of authorship in favor of certain parties unless proven otherwise.

When an application is submitted by someone other than the author, such as a publisher or a legal heir. In cases where the authorship is not clear or is contested, the law provides a framework for determining how representation and rights are to be recognized. Disputes or lack of clarity over

who has the legal standing to apply for copyright could lead to application refusal or demands for additional proof of authority to represent the author's interests.

6. Non-conformance to stipulations (Article 47)

The reasons for refusal of a copyright registration application in Myanmar due to non-conformance to stipulations as provided in Article 47 include but are not limited to the following:

- (i) Incomplete application (e.g., *missing crucial pieces of required information or documentation*);
- (ii) Incorrect information (e.g., *false or inaccurate details about the work, the copyright owner, etc.*);
- (iii) Insufficient proof of authorship or ownership (e.g., *lacks adequate evidence demonstrating that the applicant is the rightful owner of the copyright or has the legal standing to apply for copyright registration; If the applicant is not the original copyright holder but claims to have acquired the economic rights, the application may be scrutinized for proof of such "transfer". A copyright application could be refused if there's insufficient evidence of a lawful transfer of economic rights from the rightful owner to the applicant*);
- (iv) Non-payment or incorrect payment of fees, and
- (v) Lack of legal formalities (e.g., *proper signatures, declarations, or use of prescribed forms*).

The Registrar will notify the applicant to revise and resubmit the application if it does not conform to the above stipulations, implying that failure to meet these stipulations can lead to refusal.

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