

Rights and Protections for Phonogram Producers Under Myanmar's Copyright Law

A producer of a phonogram is entitled to the related rights as per Articles 39, 41, and 42. These articles grant producers exclusive [economic rights](#), ensuring that producers can control and benefit from the use of their phonograms in various ways. The provisions also set forth provisions for equitable remuneration, limitations, and exceptions to these rights, marking a significant consideration for the music industry and related sectors. KENFOX would like to provide below analysis on the rights and protections afforded to producers of phonograms as well as performers, ensuring a comprehensive understanding and practical application of the laws, thereby maximizing the utilization of their legitimate rights.

Exclusive economic rights for producers of phonograms (Article 39)

A producer of a [phonogram](#) enjoys 05 types of economic rights as follows:

- **Reproduction:** Producers have the exclusive right to authorize both direct and indirect reproductions of their phonograms. This control extends to any form the phonogram might be reproduced, reflecting the importance of safeguarding against unauthorized copies that could dilute the value of the original work.
- **Importation:** This includes the exclusive right to import copies of the phonogram, controlling the distribution channels and combating unauthorized imports.
- **Distribution:** The right to distribute the original or copies of the phonogram to the public, except for previously sold or ownership-transferred copies, adhering to the principle of exhaustion of rights which limits the control a producer has over a copy once it's been lawfully sold or transferred. This rights protects the producer's investment by allowing them to control the market dissemination.
- **Rental:** Producers can also control the rental of their phonograms to the public. This right to rental is particularly important in contexts where phonograms are consumed through borrowing rather than purchase, ensuring producers can derive revenue from these transactions.
- **Making available:** Producers have rights to make phonograms accessible to the public on-demand. This right addresses the digital environment, allowing producers to control if and how their phonograms are accessible online or through other digital means. This ensures producers can benefit from new forms of distribution and access facilitated by technology.

Limitations and exceptions for producers of phonograms (Article 41)

Provisions on “*limitation and exceptions*” as provided under Article 41 allow for specific uses of phonograms without the producer's authorization, thus, producers are not able to enforce his rights in such situations. Permitted uses without authorization include:

- Reporting current events using short excerpts.
- Reproduction for scientific research.
- Reproduction for face-to-face teaching activities.
- Incorporation into literary or artistic works under specific conditions.

Equitable remuneration for use of phonograms (Article 42)

Article 42 focuses on the conditions under which equitable remuneration is provided to both performers and producers when their phonograms are used.

- **Equitable remuneration:** When a phonogram is used for broadcasting, communication to the public, or public performance, the performers and the producer of the phonogram are entitled to equitable remuneration (*Article 42.a*). This requirement acknowledges the contributions of both performers and producers in creating and distributing the phonogram.
- **The remuneration distribution between performers and the producer:** The division of remuneration between performers and producers must be according to agreement. Unless a different agreement exists, the producer is responsible for sharing the compensation with the performers according to set terms and conditions (*Article 42.b*). This clause implies the need for

clear agreements detailing how remuneration is to be divided, ensuring transparency and fairness in compensating all parties involved

- **Duration of protection for the right to equitable remuneration:** The law protects these rights for 50 years following the year of the phonogram's publication, or if it has not been published, 50 years from the year of its first fixation. This extended period of protection underscores the enduring value of phonograms as cultural and creative works, ensuring that producers have a substantial timeframe to exploit their economic rights.
- **Ways of making phonograms available to the public:** Phonograms made available to the public in such a way that allows access from any place and at any time chosen by the users are treated as if they have been published for commercial purposes. This clause is particularly relevant in the digital age, where music is often accessed through streaming services and other online platforms.

Final thoughts

For producers of phonograms, the related rights provided in [Myanmar's Copyright Law](#) serves as a robust legal framework to protect their creative and financial interests. By understanding and actively managing these rights, producers can maximize their works' commercial potential while contributing to the vibrant landscape of cultural and creative industries. From the provisions as per Articles 39, 41 and 42, producers of phonograms should be proactive in managing their rights by:

- Ensuring clear agreements are in place for the distribution and use of phonograms.
- Being aware of the scope of their exclusive rights to prevent unauthorized uses.
- Negotiating equitable remuneration agreements for the commercial use of phonograms.
- Understanding the exceptions and limitations to these rights to deal with legal use cases effectively.

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