

Customs Recordal in Myanmar: What Copyright Owners Should Know?

A customs officer serves as a gatekeeper. Customs officers are essentially the first line of defense against the importation and distribution of pirated goods. Their ability to identify and suspend the clearance of goods that potentially infringe on copyright or related rights is a powerful tool in the legal remedy available to rights holders. The customs protection process for intellectual property rights at the border of Myanmar, as outlined in Articles 64 to 72 of [Myanmar's Copyright Law 2019](#), provides a systematic approach for rights holders to combat the importation of goods that infringe on copyright or related rights. KENFOX, which has extensive experience in coordinating with customs authorities and handling border infringement cases, would like to provide the following 8-step process for copyright holders as well as importers to grasp a correct understanding and application in protecting their rights at the borders of Myanmar.

Step 1: Application for Suspension Order (Article 64)

Rights Holder → Application → Director General of Customs

[Right holders](#) (i.e., the individual or entity owning the copyright or related rights) suspecting piracy (i.e., When there is suspicion of unauthorized copies or goods infringing on intellectual property rights being imported, are being imported, or are to be imported into Myanmar) can apply to the Director General of the Customs Department for a suspension order to prevent pirated goods from entering Myanmar's commerce channels, preventing the distribution and sale of pirated goods in Myanmar.

Step 2: Application Review and Notification (Article 65)

Application submission → Acceptance/Rejection notification → Additional information request → Provision of assurance → Decision

- The Director General will notify the applicant within 30 days about the acceptance or rejection of the application.
- If additional information is needed, the applicant is notified to submit it within 15 days, delaying the decision.
- An assurance might be required from the applicant as a condition for accepting the application. This might involve a financial guarantee or other forms of security to cover potential costs or liabilities arising during the suspension period.
- If the application is rejected, the Director General will provide clear and specific reasons.
- Unless a shorter period is requested, the undertaken actions are valid for 6 months.

Step 3: Suspension of Release (Article 66)

Application Acceptance → Suspension Notification → Inspection Opportunity → Claim verification

- Upon application acceptance or Customs' findings, if there's a reasonable presumption of infringement, the release of the suspected goods will be suspended.
- Both the applicant (rights holder) and the importer [will be notified](#) of the suspension and given an opportunity to inspect the suspended goods. This critical step allows the applicant to substantiate the claim of copyright infringement, while safeguarding the interests of the importer.

Step 4: Release or Continuation of Suspension (Article 67)

Suspension Notification → 15-Day Wait/3-Day Wait for Perishable Goods → Possible +15 Days Extension → Initiation of Proceedings? → Yes: Hold / No: Release

- The goods will be released within 15 days unless the applicant initiates legal proceedings or obtains provisional measures from the Intellectual Property Court. This suspension period can be extended by another 15 days.
- For perishable goods, the time limit for release is significantly shorter, set at 3 days, to prevent loss and ensure timely disposition of the goods.

Step 5: Review by Intellectual Property Court (Article 68)

Notice of Suspension → Filing Revision to Court → 30-Day Decision Window → Outcome: Modify, Revoke, Confirm

- Dissatisfied importers can request the Intellectual Property Court to review the suspension order, which will then confirm, modify, or revoke the suspension within 30 days.

Step 6: Liability for Costs and Damages (Article 69 & 70)

Court decision on infringement" → "Article 69: Infringer Pays / Article 70: Applicant Pays

- If goods are confirmed as infringing, the importer bears the cost of storage, destruction, or disposal.
- If goods are found not to be infringing, the applicant must compensate the importer for wrongful suspension, as determined by the Intellectual Property Court.

Step 7: Exemptions (Article 71)

- The provisions don't apply to non-commercial pirated goods carried for personal use in luggage, or specified imports/exports.

Step 8: International Cooperation (Article 72)

- The Director General may collaborate and exchange information with international customs organizations and collective management organizations regarding pirated goods.

Final thoughts

Articles 64 through 70 under Myanmar's Copyright Law provide a detailed overview of Myanmar's customs protection mechanisms against pirated and copyright-infringing goods, contributing to a stronger business environment and enhanced consumer protection. Copyright holders are empowered to take action against suspected pirated goods entering Myanmar. Copyright holders have legal grounds to request the suspension of goods suspected of infringement. The Customs Department has a statutory obligation to swiftly notify applicants, minimizing delays in resolving potential copyright infringement cases. Both the applicant and the importer have the right to inspect the suspected goods. Additionally, the Intellectual Property Court clearly outlines the consequences for dissatisfied parties, including financial liabilities for importers and applicants, based on its determination of copyright or related rights infringement.

The Customs Department in Myanmar bases its actions on "reasonable grounds" when presuming [copyright infringement](#). However, providing stakeholders with clearer criteria or examples of what constitutes these "reasonable grounds" would enhance clarity and predictability. Additionally, while Article 66 emphasizes a commitment to protecting "confidential information" during goods inspections, stakeholders would be further reassured by specific guidelines detailing how this protection is implemented, particularly to mitigate concerns about exposing intellectual property or trade secrets. Furthermore, small and medium-sized enterprises (SMEs) often find handling the copyright protection process challenging, mainly due to potential "legal costs" and the complexity of the application process. Therefore, offering targeted guidance or assistance to SMEs could significantly improve their access to copyright protection, making the system more inclusive and effective for businesses of all sizes in Myanmar.

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