

How to File a Lawsuit Against Copyright Infringement Under Myanmar's Copyright Law?

Myanmar's Copyright Law of 2019, particularly Articles 73 to 81, provides a detailed legal framework for copyright holders seeking to enforce their rights through the courts, ensuring fairness and justice in the enforcement of copyright and related rights. KENFOX, which has extensive experience in taking civil actions against IPR infringement, would like to provide the following 10-step process to equip copyright holders with essential knowledge and practical tools for a robust protection for their intellectual property rights in Myanmar IP court.

Step 1: Filing a lawsuit

- **Civil miscellaneous case:** Right holders start the legal process by filing a civil miscellaneous case in the Intellectual Property Court, specifically seeking provisional measures like injunctions or the preservation of evidence related to the infringement (*Article 73a*).
- **Criminal or civil case:** Additionally, [the right holder](#) has the flexibility to file either a criminal case, which could lead to penalties for the infringer, or a civil case that focuses on compensatory damages for the infringement (*Article 73b*).

Step 2: Requesting provisional measures

Upon application, the Court may order measures to prevent further infringement, preserve evidence, or adjust Customs' suspension orders, based on the infringement's nature. The Court may order provisional measures that include:

- **Infringement prevention:** Orders to halt the infringement and block the distribution of infringing goods within the state, including those cleared by Customs (*Article 74a(i)*).
- **Evidence preservation:** Orders to secure any relevant evidence regarding the alleged infringement, ensuring it's not destroyed or lost before the trial (*Article 74a(ii)*).
- **Customs suspension orders:** Authority to modify, revoke, or confirm any existing suspension orders placed by Customs on the import of suspected infringing goods (*Article 74a(iii)*).

Step 3: Providing evidence and assurance

Applicants need to provide proof of copyright ownership, evidence of infringement, and sufficient assurance against misuse of measures. Applicants are required to:

- **Demonstrate ownership and infringement:** Submit valid evidence proving their ownership of the copyright and that their rights are being infringed or are at imminent risk of infringement (*Article 74b(i)*).
- **Assurance against abuse:** Provide enough assurance, usually in the form of a security bond, to ensure that the requested provisional measures won't be abused (*Article 74b(ii)*).

The Court might request more details necessary for accurately identifying the alleged infringing goods, enabling a more targeted and effective imposition of provisional measures (*Article 74c*).

Step 4: Ex parte orders for urgent protection

In cases of imminent harm or evidence risk, the Court can issue ex parte orders, requiring immediate action without the infringer's input.

- The Court is empowered to issue provisional measures without the respondent's presence (ex parte) in situations where any delay might cause irreparable harm to the right holder or there's a risk of evidence destruction (*Article 75a*).

Step 5: Civil remedies and orders

The Court may issue injunctions, demand compensation for damages, and order the disposal or destruction of infringing goods. In detail, following a thorough examination, the Court may grant several remedies:

- **Injunctions:** To permanently prevent further infringement and the distribution of infringing goods (*Article 76a(i)*).
- **Damages and costs:** Orders for sufficient damages for the injury suffered due to infringement, covering legal expenses and possibly the profits gained by the infringer (*Article 76a(ii)*).

- **Disposition of infringing goods:** Orders for the infringing goods to be removed from commerce or destroyed to prevent harm to the right holder (*Article 76a(iii) & (iv)*).

Step 6: Addressing wrongful complaints

- If [the complaint](#) is proven incorrect or made dishonestly, the Court can mandate the complainant to compensate the respondent for legal expenses and other related costs (*Article 77*).

Step 7: Evidence production and preliminary determinations

- **Evidence Production:** The Court may compel the adverse party to produce evidence under their control, ensuring the protection of confidential information (*Article 78a*).
- **Preliminary Determinations:** In cases of voluntary infringement without valid reason, the Court can make preliminary judgments based on provided evidence and allegations, considering both parties' positions (*Article 78b*).

Step 8: Fines and damages

- The Court has the discretion to allocate fines imposed for copyright offenses as damages to the aggrieved party, providing financial restitution for the harm suffered (*Article 79*).

Step 9: Set-off in concurrent cases

- In scenarios where both criminal and civil actions are pursued for the same infringement, the Court can adjust the awarded damages against any fines imposed, ensuring fairness in compensation (*Article 80*).

Step 10: Applying existing laws

- For any procedural aspects not explicitly covered by the Copyright Law, the Intellectual Property Court will apply relevant provisions from Myanmar's broader legal framework, including the Evidence Act and the Codes of Criminal and Civil Procedure, ensuring comprehensive legal recourse (*Article 81*).

Final thoughts

The process of initiating legal action against copyright infringement under Myanmar's Copyright Law as provided under Article 73-81 which allows right holders to choose between filing a civil miscellaneous case specifically for provisional measures or proceeding directly with criminal or civil cases can help protect intellectual property rights effectively. Various provisional measures, such as preventing further infringement, preserving evidence, and modifying customs suspension orders provide an immediate response mechanism to halt ongoing infringement and secure evidence and is vital for preventing further damage to the rights holder while the case is being adjudicated. The range of civil remedies available, including injunctions, damages, and the disposal or destruction of infringing goods, ensures that copyright holders can seek not only cessation of infringement but also compensation for damages suffered.

Although the legal framework outlined in Articles 73-81 is comprehensive, the dual requirements for "valid evidence" and "sufficient assurance" under Article 74, necessary to obtain provisional measures and prevent misuse, may create additional challenges for rights holders, particularly when proving imminent infringement (e.g., *suspicion of infringement at an exhibition*). It is expected that a simplified application process will be introduced for cases of imminent infringement (*with a lower threshold for initial evidence while still ensuring due process, potentially involving provisional measures of shorter duration or limited scope*). Such measures would require less stringent evidence initially but would be sufficient to temporarily halt imminent infringement. Furthermore, consideration may be given to a "flexible assurance requirement", tailored to the applicant's size, financial capability, and the nature of the infringement claim. For small copyright holders or those with limited resources, the financial burden could be reduced by lowering the required assurance amounts or accepting alternative forms of assurance to encourage IPR holders to willingly take actions against infringers via court avenue in Myanmar.

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