I am greatly honoured to read this paper to such a distinguished audience and on such a unique occasion. First of all I would like to express frankly and honestly that I am not a copyright expert but rather a “common lawyer” who has tried to follow the development of international copyright with ever-increasing interest.

Before I read the Copyright in Myanmar since 1914. I will present a brief facts about the development of National Copyright Laws. The origins of copyright are closely related to the development of printing, which enabled rapid production of copies of books at relatively low cost. The growth of literacy created a large demand for printed books, and the protection of authors and publishers from unauthorized copying was recognized as increasingly important in the context of this new means of making works available to the public. So the first copyright laws were enacted as a result.

The statute of Anne, enacted by the British parliament in 1709, was the world’s first copyright law. It provided that, after a lapse of a certain period, the privilege enjoyed by the Stationers’ Company to make and distribute copies of books at relatively low cost. The growth of literacy created a large demand for printed books, and the protection of authors and publishers from unauthorized copying was recognized as increasingly important in the context of this new means of making works available to the public. So the first copyright laws were enacted as a result.

The Statute of Anne served to promote competition in the publishing business by restricting monopolies, and recognized the authors as the holder of the right to authorize copying.

From this beginning, copyright spread into other countries. Denmark recognized the rights of authors in an Ordinance of 1741. In 1790 the United States of America promulgated its first federal copyright statute. In pre-Revolutionary France, copyright belong to publishers in the form of a privilege granted by the sovereign. During the Revolution, two decrees of 1791 and 1793 established the protection of authors of literary and artistic works. In the mid-nineteenth century, the various German States enacted Laws recognizing authors as the owners of rights in their works. Around the same time, Laws were passed in Austria and Spain. National codification also took place in some of the Latin American countries following their independence. In Chile (1834), Peru (1849), Argentina (1869) and Mexico (1871). In Japan after enacted a copyright Law in 1890 and after late years of Meiji renaissance in 1868, the existing 1970 was promulgated.

Like other countries of the world, Myanmar protects original literary, artistic, musical and dramatic works by the 1914 Copyright Act (India Act III of 1914). It was the common law observed by most of the British Colonial countries and the Act was based upon the 1911 Copyright Act of the United Kingdom. The 1914 Copyright Act began to come into force in Myanmar on the 24th February, 1914. Even after Independence, it was existing up to date according to the Union of Burma (Adaptation of Law) orders, 1948. Therefore the 1914 Copyright Act is still the existing Law, relating to copyright protection in Myanmar. In fact the Act has only thirteen sections with Copyright Act 1911 of the United Kingdom of Great Britain and Ireland. In this Act, the previsions protected works, authorship and ownership of copyright, duration (term) of copyright, limitations, infringements of copyright, applications of copyright, civil and criminal remedies, definitions and penalties are included.

These provisions which prescribe how to modify and apply the English Act in Myanmar. In the first schedule, Part I it prescribes that “the copyright shall subsist, for the term here in and artistic was first published within the Union of Myanmar”. And it also prescribes that the subsisting Copyright means the sole right to produce or to reproduce the work or any substantial part there of in any material form what so ever to perform or in the case of a lecture to deliver the work or any substantial part thereof in
public, if the work is unpublished to publish the work or any substantial part thereof. Among others sole right if prescribes that it includes “in the case of a literary, dramatic or musical work to make any record, perforated roll, cinematography film or other contrivance by means of which the work may be mechanically performed or delivered and to authorize any acts”.

The duration of the protection relating to literary, dramatic, musical and artistic work, copyright subsists or the life of the author and 50 years after his/her death. In respect of the mechanical reproduction such as records perforated rolls and other contrivances by means of which sound may be mechanically reproduced, the duration of copyright shall be 50 years from the date of making of original plate from which the contrivance was directly or indirectly derived.

Although the above paragraphs of the Copyright mentioned briefly prescribes for the protection of the creators’ works there had been no suit or prosecution according to this Act. The several reasons for this factor in our country are for example, lack of awareness of our people, lack of administration and management by the specific Ministry and most of the disputes between any infringer and creator of works settled amicably by negotiations or conciliation sometimes with the intervention of certain influential persons or bodies such as Writers and Journalists Association, Motion Picture Association, Music Association etc. This precedent that we always mention to the world is a distinctive personal trait of Myanmar people. Giving this opportunity I would like to present the current situation system of settlement by the Music Association in Brief.

Myanmar Music Association (MMA) was formed under the guidance of the Government as a non governmental organization since 1991. Its objectives are to serve the State with power of music, to protect the interest of musicians according to law; and to set-up unity among musicians members. Members of MMA comprising of composers, music producers, music distributors, recording studio owners, music copiers, and musical machinery business personal.

For the matters of recording, producing and distribution of any music, the lyrics of songs are to be submitted in advance to the Literary Scrutiny Board, under the Ministry of Home Affairs (now under Ministry of Information). The Board Undertakes for the scrutiny of lyrics so submitted whether they are in accordance with the policies of the Government.

The above submission is in order to avoid disputes, the applicant (i.e. The Distributor) shall collect and state the particulars of composer, singer, music band and studio accompanying with their letters of consent and undertaking, and initially submit them to MMA. Then MMA shall relay them to the board along with its recommendation. After the scrutiny by the Board, recording and distribution can proceed. Due to such arrangements, neither production nor distribution of the song without the authorization of the composer is possible. Anyone who wishes to use the song for which composer is anonymous or untraceable shall only be allowed to use them only after a reasonable and fair amount of deposit money is paid to MMA. When the song composer becomes known the deposit shall be reimbursed and transferred to him. The problem MMA has encountered so far is recopying a piece of work without the authorization of the copyright owner. MMA in co-ordination and cooperation with relevant ministries has been taken necessary actions to cope with the issue. MMA also encourages copyright owners to take criminal action against copyright pirates.

Relating to copyright case law in Myanmar one reported case came out in 1939. It was colonial days in 1938 after 24 years the Copyright Act came into force in Myanmar. The reported case is as follows: -

Maung Nyi Pu vs East End Films, Civil Regular Suit No. 206 of 1937: 1939 Rangoon law Reports, Original (civil), held on 21st February 1938, before the High Court Mr. Justice Braund.

Held also that in S 1 (2) of the Copyright the world “authorize” had a wide meaning as in the English Act and would cover anything done with the knowledge and connivance of a person.

Falcon V Famous Players Film Co., (1926) 2 K.B. 474; performing Right Society, Ltd., V. Ceryl
Theatrical Syndicate, Ltd., (1924) T.K.B. 1, referred to.

Findings of Justice Braund: The suit is one by a gentleman named Maung Nyi Pu, who is the sole proprietor of a film producing business called the “A-1 Film Company”. The plaintiffs under that name have been engaged for some little time in producing Burmese films for exhibition in Yangon and in Myanmar generally. The suit is brought against a rival concern called the “East End Films” of which the sole proprietor is an Indian gentleman named Anand Singh. The subject matter of the differences which have arisen between the plaintiffs and the defendants is a young film actress by the name of Ma Than Tin, otherwise called Gracie May Than. In that case the plaintiff claim two reliefs, the first claim against the defendants for enticing Ma Than Tin away from them and inducing her to leave their service. The amount of damages for that claimed by the plaintiffs is Rs 8,000.

There is a second cause of action pleaded by the plaint, which is to the effect that, after Ma Than Tin had left the plaintiffs and had entered into an engagement with the defendants, the defendants caused to be published in the Burmese (Myanmar) Cinema Journal of June 1937 an advertisement or announcement of their forthcoming productions in which Ma Than Tin was to perform and so the plaintiffs allege there was reproduced in that advertisement or announcement a photograph of Ma Than Tin which photograph was the copyright of the plaintiffs. And upon that footing the plaintiffs claim against the defendants for entitling Ma Than Tin away from them and inducing her to leave their service. The amount of damages for that claimed by the plaintiffs is Rs 8,000.

At that time of the above reported case Myanmar is still under the British reigning. After Myanmar got an Independence and still up to now another case law came out follows: -

Copyright case reported by the supreme court of the Union of Myanmar.

“U Hla Win and other vs. Daw Kyi Kyi alias Daw Yin Wae Lwin; 1999 Myanmar Law Reports (Civil), page 208”; Held on 4 November 1999 for the Civil First Appeal before the Supreme Court Judge U Tun Shin.

Held: It is an undisputable fact that Respondent Daw Kyi Kyi, nom de plume “Yin Wae Lwin (Pyi)” authored and published a novel namely “Hmine Wae Chit Tè Khet Thissa” in 1981. Therefore under the section 1 (1) of the Copyright Act, 1911 which contains in the First Schedule of the Myanmar Copyright Act, 1914, Daw Kyi Kyi had been enjoyed the copyright in respect of the said novel since then. In the case of a novel, copyright includes, according to the section 1 (2) (c) of the 1911 Act, to produce or reproduce and also to convert it into a dramatic work, by way of performance in public or otherwise.
**Held also:** The owner of the copyright may assign the right, either wholly or partially, and either generally or subject to limitations. But, such assignment must be done in writing and signed by the owner himself or his duly authorized agent. Section 5 (2) prescribes that unless so written and signed, such assignment is not valid.

**Held also:** Under section 2 (1), the copyright shall be deemed to be infringed by any person who, without consent of the original owner of the copyright, does use any right of the owner. Therefore, the Appellants, U Hla Win and Daw Hla Hla Mu, the owners of Phowa Video Production committed the infringement of the copyright of Daw Kyi Kyi, the original owner of the novel when they, without consent of her, produced a video drama of the original novel “Hmine Wae Chit Tè Khet Thissa” under the new name of “Hmine Wae Chit Thaw Khet Thissa”

**The brief of the case:**
The Author Daw Kyi Kyi wrote the novel “Hmine Wae Chit Tè Khet Thissa” and made publication of it in 1981. Then she sold its manuscript to one Daw Khin Than for reproduction of it into video feature for the amount of Kyat 10000. Daw Khin Than resold it to the Phowa Video Production in 1994, but without knowledge or consent of Daw Kyi Kyi. As advertisements and news about such video feature ahead of its production appeared in journals, Daw Kyi Kyi made sending objection notices to Phowa Video Production and also submitted her objection to the Myanmar Film Federation. But the production went on under a slightly changed name of “Hmine Wae Chit Thaw Khet Thissa” and also made some changes to the theme as well as the text of the same.

The Divisional Court in exercise of its original civil jurisdiction, decided in favour of the plaintiff (author) and ordered the defendants (Phowa Video Production) to pay Kyat 500,000 to the plaintiff as she claimed about for damages to her copyright.

The Supreme Court Judge in his appellate decision reaffirmed the right of an author of a novel conferred by the Copyright Act, 1911 (See Burma Code Volume 10, page 329). In regard of argues of the Appellants that the suit should either be filed only against Daw Khin Than other than them or include Daw Khin Than as a co-defendant essentially, the Judge turned them down reasoning that those were not substantial matters in this case of protection of the copyright. Moreover, the Judge held that while the assignment to Daw Khin Than could not be valid in view of lack of any written or documentary evidence, the so-called assignee had no right to reassign, say, reselling it to others, and subsequently, the so-called re-assigenees had no right to enjoy the rights of the original owner of the work.

However, the Judge reduced the amount of compensation from Kyat 500,000 to Kyat 50,000 on the ground of that the amount of damages should be determined only in consideration of the author’s work and on the basis of substantial damages.

According to these above case laws there seem to be little awareness about copyright in Myanmar, only few people who are intouch with the legal profession. Although some copyright cases reached to court these cases were concluded by the parties concerned by submit an application before the court to compound the case.

In the current situation Myanmar being not only member but also a founder member of WTO has an obligation to implement the provisions of the TRIPs Agreement: The Government established the Intellectual Property system by drafting a copyright law. The drafting process started on September 2004 headed by the Minister for the Prime Minister Office, with the close cooperation of Office of the Attorney General and Ministry of Science and Technology. The draft new law is based upon the WIPO model law and in line with the TRIPs Agreement and Conventions and Treaties administered by WIPO and now it reached to the eight draft. This law will be come out within the time frame implicate by the TRIPs Agreement.

Finally I would like to express that delegates of the National Convention plenary session deeply discuss the IP issues and adopted the Intellectual Property to be laid down as basic principles in drafting the constitution on 3rd March 2005. So
the copyright protection will be emerged not only in the copyright law but also in the new Constitution.