

ASEAN INTELLECTUAL PROPERTY RIGHT ACTION PLAN 2004-2010

I. CONTEXT

A. Strategic Statement

Intellectual property (IP) and IP rights (IPRs) creation, commercialization, and protection have assumed an increasingly profound and unprecedented influence on the social, economic and technological progress of interdependent economies, firms and communities of people in across the world. Indeed, the collective transformation of ASEAN into an innovative and competitive region has come to the forefront of national policy attention and regional cooperative efforts. Such a transformation is a precondition for regional economies, industries and enterprises to take full advantage the significant opportunities, as well as to overcome the many difficult challenges, that have emerged under a global economy which is largely knowledge-based, digitally linked and highly competitive.

B. Overview of the Opportunities and Challenges

The rapid progress in science and technology (S&T) and research and development (R&D) has led to a significant and continuous decline in the cost of information and communications technologies (ICTs), among other things. In turn, this has permitted "intelligence" to be built progressively and innovatively into an ever larger number of products, production processes and services in virtually all human endeavours.

Largely as a result, IP has been a significant source of comparative advantage of business enterprises and a major driver of their competitive strategies. In the commercialization process, furthermore, IP assets are a key determinant of the conditions and circumstances of entry of business partners or competitors into domestic, regional and global markets.

In recent years especially, the growing importance of IP assets has been further enhanced by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). There is, in addition, a worldwide trend leading toward both stronger and broader IP protection (or the so-called TRIPS-plus regimes under various free trade agreements of a bilateral or plurilateral nature).

It is now widely accepted that the main characteristic that has separated developed countries from their developing counterparts is the large and, in most cases, widening gap in knowledge and applied technology. In this context, the collective transformation of ASEAN into a dynamic and competitive supplier of the external market places has been given an added impetus after the controversy regarding total factor productivity (TFP) initiated by a provocative article by Professor Paul Klugman in the mid-1990s, from the lessons learnt in the wake of the financial and economic crisis of 1997-1998, and given the hesitant and fragile economic recovery that has unfolded so far.

In fact, a recent publication (in 2003) from the World Bank examines in great detail the future of growth, and its prerequisites, in East and South-East Asia in the coming decade. It further underlines the pressing need for a long-term policy commitment to transform the region into one which is based largely on knowledge, driven by innovation and sustained by life-long learning.

II. POLICY INITIATIVES

ASEAN is fully aware the crucial role of IP and IPRs in social, economic and technological progress, and hence in broad-based development and poverty reduction within the region. Member Countries have pledged and committed themselves to working together to improve the regional framework of

policies and institutions relating to IP and IPRs; to promote IP cooperation and dialogues within the region; and to widen and deepen regional human resources and institutions, as well as public awareness of issues and implications, relating to IP and IPR.

The ASEAN IPR Action Plan 2004-2010 is designed to build on the progress which has been achieved in collaboration among ASEAN governments, ASEAN dialogue partner countries and institutions, and civil society organizations. It also places regional cooperation in IP and IPRs in a larger and mutually supportive context of the social, economic and technological development of ASEAN and, at the micro level, of the dynamism, efficiency and flexibility of ASEAN enterprises, both large and small.

A. Mission

- To foster collaboratively the development of a culture of learning, innovation and creativity in ASEAN, optimizing on the diversity of Member Countries.
- To develop a regional identity and profile in IP and IPR generation, registration, commercialization, protection and enforcement.
- To encourage cross-border collaboration and networking for the widening and deepening of ASEAN S&T base and R&D activities, and the registration and commercialization of their results and outputs.

B. Objectives

- To help accelerate the pace and scope of IP asset creation and commercialization inside and outside ASEAN, and the formation of domestic and cross-border linkages in S&T fields and R&D activities.
- To develop and harmonize an enabling IPR registration, protection and enforcement framework of policies and institutions in the region.
- To promote greater public awareness, and the building up of human resources and institutions relating to IP and IPRs in ASEAN.
- To further empower national IP Offices in the collaborative provision of BDS in support of the above objectives.

C. Approach

Economic and social advancement, capacity building and institutional deepening are a long term process. This applies especially to IP- and IPR-related matters because, as discussed below, these matters had a comparatively low profile in most developing countries until the mid-1990s. As such, some of the programs and projects for implementation under the ASEAN IPR Action Plan 2004-2010 embody a number of initiatives under the Ha Noi Plan of Action. On the other hand, some other new programs and projects to be proposed will have a time frame longer than that of the ASEAN IPR Action Plan 2004-2010.

Additionally, the promotion of IP and IPR creation, commercialization and protection requires substantial resources. This applies especially to efforts to foster creativity and innovation, including through the formation of cooperative linkages and strategic alliances among S&T and R&D institutions. However, national and donor resources are typically very limited. Thus, IPR-related proposals under ASEAN IPR Action Plan 2004-2010 are characteristically modest in scope and resource requirements. They are also specific in focus and targeting to ensure the most cost-effective outreach and sustainability.

Lastly, matters relating to IP and IPRs tend to have varying usefulness and importance among economies with different resource endowments and at different stages of economic, social and technological development. Besides, assistance from ASEAN-6 in favor of ASEAN-4 is an important objective in itself. All these considerations have been duly taken into account in the program and project proposals for inclusion under the ASEAN IPR Action Plan 2004-2010.

D. Focus Programs and Projects

1. Fostering IP Asset Creation in ASEAN

(a) Context

It is well known that many Asian countries, including most of those in ASEAN, have achieved an impressive economic performance over the last several decades. However, such a performance appears to have been driven largely by higher rates of physical accumulation of tangible productive factors (such as labour and capital resources).

The contribution of TFP, which reflects the stimulus from inventions, innovations and technological change, has generally been very limited in the Asian growth process. It accounts for less than third of the expansion in gross domestic product (GDP) in the last three decades -- compared to about four-fifths in the United States, and two-thirds in France, Germany and the United Kingdom.

Other data are equally revealing of the critical weakness in an economic performance led largely by physical accumulation. Patents are a good indicator of the S&T base and R&D capabilities. These IP assets are also the cornerstone of discrete gains in productivity at the level of firms and industries, and hence the dynamism and competitiveness of sectors and economies as a whole.

According to the World Intellectual Property Organization (WIPO), the number of patents granted by ASEAN IP Offices to ASEAN residents during the 1990s was less than 5 per cent the total number of patents granted by these Offices to both resident and non-resident owners in the region. Data from the United States Patent and Trademark Office (USPTO) also indicate a similar, substantial gap in knowledge and technology. During 1991-2001, for example, only 1 and 5 per cent of United States patents were issued by USPTO to residents and non-residents in ASEAN and in all developing countries respectively.

(b) Issues to be addressed

The generally poor record of creativity and innovation as reviewed above is regrettable in terms of resource allocation. This is because evidence among developed countries indicates that investment in R&D yields private returns of 20-30 per cent and social returns in excess of 50 per cent. These rates of payback are far higher than those obtainable from investment in virtually all areas of economic activities and services.

There are, however, several daunting challenges and difficulties in the collaborative transformation of ASEAN into a creative and competitive region. Firstly, the current S&T base and capabilities are both narrow and limited in virtually all the regional countries. This is both the cause and consequence of the persistent and significant under-investment in R&D activities virtually across ASEAN.

As a ratio of GDP, for example, public spending on R&D averaged 0.2 per cent or less in most regional economies in the late 1990s. Such a percentage is substantially lower than the corresponding ratios in such technologically dynamic countries as Japan and Republic of Korea where R&D expenditure approached three per cent of GDP in the late 1990s. In addition, spending on R&D by the business sector in ASEAN is virtually negligible with Singapore being the only exception.

In the above connections, the formation of cross-border linkages and strategic alliances in S&T and R&D can be a useful a means to share risks and achieve greater collective efficiency and productivity. In fact, such linkages and alliances are particularly evident among the new and dynamic fields of technology, especially electronics and biotechnology, and in the automobile industry since the early 1980s.

There is a Catch-22 situation, however. Firstly, the sustainability cross-border linkages and strategic alliances depend on the age-old issue of trust, reliability, quality and timeliness in delivery among partners and stakeholders. It is thus conditional on the building up or the availability of a strong R&D capabilities and critical mass in (some specific fields of) S&T. All these are a severe weakness virtually across ASEAN at present.

The second problem is that a large gulf exists between (government-funded) S&T and R&D organizations and the technological needs of industry in ASEAN, again with the possible exception of the situation in Singapore. Consequently, there have been limited transfers of technology from S&T and R&D institutions to the business sector. At the same time, technological cooperation among business enterprises themselves have been less than satisfactory in many parts of the region.

Thirdly, there is a great shortage of information and research on the patterns and characteristics of IP generation and IPR registration within ASEAN. This applies especially to the nature, technological fields and directions, productivity, and commercial viability of regional R&D activities. Such a shortage has greatly complicated the design and implementation of policies for the promotion of IP asset creation, and the evaluation of their impact in the region.

(c) Proposals

Under the ASEAN IPR Action Plan 2004-2010, the programs and projects for the promotion of IP asset creation have three major thrusts. One relates to collaborative activities to foster the emergence of innovative and competitive sectors and industries in ASEAN – including through the implementation of facilitating IP and, more generally, development policies.

Activities for the cooperative promotion of cross-border linkages and networks in S&T and R&D institutions constitute the second focal area of the proposed programs and projects. The general emphasis is on encouraging (a) more linkages and strategic alliances among S&T and R&D both within and outside ASEAN; and (b) closer relationship and interaction between these institutions and private industries and businesses.

The third area of focus is embodied in collaborative activities to maximize the contribution of IP and IPRs at the enterprise level. These activities include the incorporation of IP into business strategies and business plans, IP asset evaluation (and the associated development of self-reliant system toolkit or system packages for this purpose), and the use of IP assets as collateral.

2. Developing a Framework for Simplification, Harmonization, Registration and Protection of IPRs

(a) Context and issues to be addressed

The collective transformation of ASEAN into an innovative and competitive region depends greatly on the availability of a conducive framework of IP policies and institutions. In general, there is considerable scope for simplification, rationalization, harmonization and cost reduction in the IP registration and maintenance process, especially in the case of patents.

Firstly, information search (including for prior art) is not cost free while subscription to commercial data banks is an expensive proposition, especially for SMEs. This is the more so if translation and other technical services are involved. Besides, the turnover rate between patent filings and registrations is a multi-year process in many countries, including those in ASEAN. This can be a source of costly delays and uncertainties in commercialization from the viewpoint of enterprises and creators of IP assets.

Secondly, the financial burden in IPR registration can be very heavy. As regards patents, for example, expenses for legal and technical expertise (but excluding translation fees) constitute a large component (over one-third) of the estimated overall cost for patent registration and maintenance

(totaling 20 years). This cost ranges from US\$ 11,000 to US\$ 16,000 within ASEAN. In comparison, the estimated cost for a typical 20-year life of a Japanese patent is around US\$ 21,000 and that for a United States patent, US\$ 10,000.

The third issue is the robustness of IPR protection from misuse or unauthorized application. WTO members or signatories to various IPR treaties tend to have strong IPR regimes in principle. In practice, however, the vigour of monitoring and enforcement varies greatly because of, among other reasons, weak capacities and limited resources for implementation in most ASEAN countries. Indeed, IPR protection and enforcement is probably among the weakest links in the chain.

Lastly, the maintenance and protection of IPRs overseas has become more important due to the increasing globalization of economic activities. However, sustaining such an overseas presence is both complex and expensive for most ASEAN enterprises. This is partly because of the considerable diversity in IPR laws, regulations and procedures among different countries, despite long drawn-out attempts at cross-border harmonization. In addition, expenses for IPR monitoring and legal representation, and for technical expertise overseas tend to be substantial, constituting often an unaffordable burden as well.

(b) Proposals

Under the ASEAN IPR Action Plan 2004-2010, programs and projects designed to raise the propensity of creators and inventors to register and maintain their IP assets are largely built on the progress in collaborative work over the past several years. They have three main thrusts.

The first concerns the creation of an ASEAN regional IP identity. The pertinent activities to be carried out include a detailed examination of the needs in, the areas of, and the most practical ways and means for simplification, rationalization, cost reduction and harmonization of IP framework and policies, including in trademark and design systems.

Activities under the second area of thrust are related, in several ways, to those in the first focal area. They include detailed consideration of policy issues and implications as well as exchanges of views and experiences concerning accession and compliance to various international treaties on IPRs.

The third area of focal attention consists of activities for the maintenance and deepening of regular exchanges of views and experiences with ASEAN dialogue partner countries and organizations on IP and IPRs. In addition, closer coordination and monitoring is to be sustained in the design and implementation of programs and projects in cooperation with these dialogue partners.

3. Promoting greater awareness and building up IP capacity

(a) Context and issues to be addressed

The TRIPS Agreement has linked for the first time the protection of IPRs directly to multilateral trade rights and obligations as an integral element of the international trading system administered by the World Trade Organization (WTO) from 1995. Additionally, provisions under this Agreement itself extend IPR protection to a level comparable generally to the high levels of protection in developed countries. Furthermore, as noted earlier, there has been a worldwide trend leading toward both stronger and broader IP protection since the mid-1990s.

IP administration and institutions had existed in many developing countries before the establishment of WTO in 1995. Typically, they had a low profile and limited resources, however. For example, a survey of 96 developing countries by WIPO in 1996 shows that only 10 (or 15) countries had an independent statutory body in charge of industrial property (or copyright) administration.

By and large, the situation has not changed that much since that survey. Within ASEAN itself, IP Offices operate as an entity in various Ministries or in the Office of the President as in the case of Philippines. The exceptions relate to the IP Office of Singapore, which became a statutory body in April 2001, and the IP Corporation of Malaysia (currently under transformation).

The net result is that, firstly, many developing countries (including those in ASEAN) did not have legislation or still do not have adequate legislation in several areas covered by the TRIPS Agreement (e.g., geographical indications, plant varieties and other biological resources, integrated circuits, and undisclosed information and trade secrets). Secondly, they also do not have a sufficient supply of IP and IPR expertise in their national academic, administrative and governance institutions.

Largely as a consequence, there remains an acute and continuing shortage of legal and other professionals with specialization and experience in IP-related disciplines across the developing region, including ASEAN. In addition, notwithstanding concerted efforts at information dissemination by IP Offices in ASEAN, there has been an inadequate awareness and familiarity with the IPR systems and instruments within the general public and among business enterprises, SME especially.

Meanwhile, it is true that advice can be sought from broad-based business development services (BDS) and outreach and other programs, including from accountants and general-practice lawyers. In reality, however, such advice can be both expensive and so general in nature as to offer little useful guidance in terms of IP development, registration, management, commercialization and protection.

(b) Proposals

Under the ASEAN IPR Action Plan 2004-2010, programs and projects for the promotion of greater public awareness of IP issues include the organization of IP-related workshops and training courses, and public events and commemorations. In addition, good practices and success stories in raising IP awareness can be collected for multi-media dissemination along with the development of IP-related teaching materials and curricula.

As regards human and institutional capacity building, activities in this focal area include the conduct of regular workshops and training courses on various IP-related subjects, and the exchanges of policy experiences. As appropriate, study visits and internship schemes can also be organized. The target beneficiaries in some of these activities will also include business-sector persons and personnel from R&D and S&T institutions.

4. Enhancing cooperative Business Development Services (BDS) activities by ASEAN National IP Offices

(a) Context and issues to be addressed

For reasons discussed earlier, most IP Offices in the region tend to be short of various critical resources – including modern ICT infrastructure and facilities, and an adequate supply of qualified and experienced human resources. Properly empowered with dissemination skills and technical savvy, these Offices can have a crucial role to play in the collaborative promotion of IP asset creation and innovation, thus influencing directly the development of technological trajectories and capabilities in ASEAN.

In particular, their activities can help current or potential entrepreneurs and firms (i) to select suitable technologies at lower costs in purchase or licensing while coping timely with the resource requirements from rapid technical changes; (ii) to develop, widen and deepen technological capabilities – including moving up the technological ladder or diversifying into other areas of technology; (iii) to monitor and enforce IP rights; and (iv) to integrate IP issues in business strategies and plans – including through regular audits and valuations of in-house IP assets, and in using such assets in business negotiations or as collateral for business financing.

In the above connections, IP Offices in ASEAN certainly can learn and benefit from the experiences of their counterparts in other countries. Such experiences may relate to concrete and replicable good practices and success stories in ICT-based dissemination and demonstration services as well as in the provision of IP-related BDS.

A matter of concern in the above connection is the currently limited availability of up-to-date and comparable information and data on the resources at the disposal of national IP Offices in relation to the vital functions that these Offices are expected to carry out and can actually perform. This poses a formidable challenge in any systematic and objective assessment of the specific needs for empowerment of IP Offices, and in the drawing up possible roadmaps for future directions and activities in cooperation in the provision of BDS among the regional IP Offices as well as between them and those outside the region.

Under the ASEAN IPR Action Plan 2004-2010, programs and projects for the empowerment of national IP Offices fall into two areas of thrust. One concerns a detailed assessment of needs which are characteristics of all national IP Offices in ASEAN. On the basis of this assessment, possible roadmaps for collaboration in BDS provision can be mapped out for follow-up consideration by all stakeholders.

Activities in the second focal area are designed to enhance the efficiency, effectiveness and sustainability of IP-related BDS, especially those which can be shared or replicated on a regional basis. In this context, due attention is given to the formation of an ASEAN databank on patents and a brokering system for patented technology, among other things.

ASEAN IPR Action Plan for 2004-2010

TARGETS	ACTIVITIES	INDICATIVE TIMEFRAME
Fostering IP Asset Creation in ASEAN		
IP policy and its relationship to economic development	Review of experiences on a proactive IP policy in the promotion of innovation, technological improvements and awareness for enhanced competitiveness of the business sector	2004 and on-going
Maximizing the contribution of IPR to the growth and competitiveness of firms, including SMEs	<p>Developing strategic plans and policy measures for the promotion of innovation within firms, of collaborative arrangements among firms, especially SMEs. Focus:</p> <ul style="list-style-type: none"> • Promotion of innovation activities, IP assets and IPR ownership of firms. • Compiling of concrete and customized action plans to enable SME to develop business development plans and services in relation to IP and IPR matters. 	2004-2006
	<p>Fostering better working knowledge of firms (including SMEs), S&T and R&D institutions, universities, and other pertinent stakeholders on proper strategies on IP asset management through training and seminar activities. Focus areas:</p> <ul style="list-style-type: none"> • IP asset audit, valuation and planning, and securitization. • Identification and acquisition of IP rights. • Exploitation and enforcement of IP rights <p>Cost-effective search for IP-related information, collaborators, IPR registration etc.</p>	2005-2010 (on-going)
Formation of linkages and networks between and among private-sector industries and business and S&T and R&D organizations and universities	Study on feasibility of establishing the IP business development services (BDS) Hub(s) in ASEAN involving collaboration from all major stakeholders such as national IP offices, S&T and R&D institutions, universities, and private-sector associations, industries and business	2009-2010
Dissemination of system toolkits or packages for self-reliant trouble shooting and diagnosis (to be implemented jointly with activities under objective 4)	<ul style="list-style-type: none"> • Development, field testing, and multi-media dissemination of self-reliant system toolkits or packages for maximum cost-effective outreach and sustainability in the provision and mentoring of IP-related business development services (BDS). 	2006-2010

TARGETS	ACTIVITIES	INDICATIVE TIMEFRAME
Developing a Framework for Simplification, Harmonization, Registration and Protection of IPRs		
Simplification and Harmonization of Registration and Procedures	Consideration of current IP registration and procedures in IP offices. Analysis and working out simplified and harmonized procedures	2004-2010 (On-going)
ASEAN Trademark System	Consideration of the suitability of a regional system as compared to membership in international system and depending on the outcome.	2004-2010
ASEAN Design System	Examination of issues and implications as a first step in the consideration of the feasibility of an ASEAN Design System. <ul style="list-style-type: none"> • If decision made to proceed by regional route, various studies to be carried on harmonization areas and proposals, preparations of framework agreements and regulations relating to the ASEAN Designs System etc. 	2004-2010
Improvement of IP legislation, protection and enforcement	Reviewing and aligning domestic IP laws and regulations for TRIPS conformance among WTO members of ASEAN. On-going monitoring of: <ul style="list-style-type: none"> • status and developments in IPR protection • changes and amendments of laws and regulations to the evolving TRIPS standards 	2005-2007. On-going monitoring afterwards
Membership of international IP treaties	Consideration of issues and implications in accession and compliance with international IP treaties. Focus: <ul style="list-style-type: none"> • WIPO Internet Treaty (i.e., WIPO Copyright Treaty and International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations) • Madrid Protocol (Trademark) • Hague Agreement concerning the International Deposit of Industrial Designs • Paris Convention for the Protection of Industrial Property. • Berne Convention for the Protection of Literary and Artistic Works. • Patent Cooperation Treaty. • Budapest Treaty on the International Recognition of the Deposit of Microorganism for the Purposes of Patent Procedure 	On-going

TARGETS	ACTIVITIES	INDICATIVE TIMEFRAME
ASEAN Classification of Ethnic Goods and Services	Compiling and classifying the consolidated list of ethnic goods and services from ASEAN Member Countries	2004-2005
Enhanced exchange information on copyright and related rights issues and exchange information on common and enforcement matters. Sharing and discussion of collective management issues.	Exchange of information on common enforcement issues	On-going
	Sharing and discussion of collective management issues	On-going
	Consideration of the establishment of collective management societies in ASEAN	On-going
	Study on the feasibility of, and workplan on, copyright cooperation in ASEAN	2004-2005 (On-going)
IP policy dialogues and coordination in project implementation with dialogue partners	Deepening exchanges of policy experiences and sustaining timely coordination on technical assistance project matters between ASEAN and AIPA, CER, China, EC, ECAP II, INTA, JPO, WIPO, USA etc.	On-going
Promoting greater awareness and building up IP capacity		
Promoting greater public awareness	Conducting IP awareness activities, seminars, conferences, and workshops on various IP related issues	On-going
	Development of IP-related educational materials and curricula. (Note: possibly under ECAP II)	2005-2007
	On-going organization of ASEAN IP Month/Events	On-going
	Deepening exchanges of IP policy experiences among ASEAN Member States	On-going
Enhancing human and institutional capacity in IP matters	<p>Conduct of training programs for IP professionals (customs, IP officials, judges, prosecutors, enforcement agency personnels) in the areas indicated in 4.1 as well as in the following areas:</p> <ul style="list-style-type: none"> • IP asset audit, valuation and planning, and securitization. • Identification and acquisition of IP rights. • Exploitation and enforcement of IP rights • Cost-effective search for IP-related information, collaborators, IPR registration etc. 	On-going
	Providing training programs for entrepreneurs, inventors, creators, S&T and R&D institutions, universities, business associations and industrial groups on areas indicated in 3.2.	2004-2010 (On-going)

TARGETS	ACTIVITIES	INDICATIVE TIMEFRAME
Enhancing cooperative Business Development Services (BDS) activities by ASEAN National IP Offices		
Improving provision of Business Development Services (BDS) by IP Offices	Exchange of views and experiences on : <ul style="list-style-type: none"> - innovation promotion activities currently being undertaken by IP Offices - examination of IP-related areas where the needs of beneficiaries (including enterprises, inventors, S&T and R&D institutions etc.) are inadequately met. - mapping out scope of future activities and related resource requirements for provision of IP-related business development services (BDS) 	On-going
	Promotion and training IP professionals in providing business development services (BDS) to entrepreneurs, S&T and R&D institutions, innovators etc.	2005-2010 (On-going)
Exchange programs among IP Offices	Conduct of internship and study visit programs for IP professionals among IP offices within and outside ASEAN	On-going
ASEAN Patents Database	Preparation and gathering of bibliographic data and abstracts. Focus activities: <ul style="list-style-type: none"> • Inclusion of the above information in ASEANPAT Database • Acquisition of infrastructure <ul style="list-style-type: none"> ○ Maintenance and updating of database 	On-going