

Harmonization of Intellectual Property Laws in ASEAN: Issues and Prospects

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ABSTRACT

Most of the Association of South East Asian Nations (ASEAN) have put in place intellectual property (IP) laws that were originally either inherited from the colonial past or adopted later as part of the urge to modernise. Although a desire has been expressed, through the “ASEAN Framework Agreement on Intellectual Property Co-operation”, adopted on 15 December 1995, to unify their IP systems, that agreement has not been followed by any detailed plans yet.

This paper seeks to examine the prospect for ASEAN of adopting a single regional IP system. Section 1 formulates the international context against which such an effort should be assessed. Section 2 then surveys the intra-ASEAN economic and IP reality. Section 3 evaluates the findings in sections 1 and 2 to determine whether the expressed desire for an ASEAN-wide IP system will materialize. The article concludes that ASEAN will not be able to trail blaze in this area as they would be forced to embrace international developments in the IP sphere; that they might succeed in introducing a single administrative machinery for ASEAN based on the stated developments.

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Introduction

The Association of South East Asian Nations (ASEAN) now groups together nine countries¹ most of which have put in place intellectual property (IP) laws that were originally either inherited from the colonial past or adopted later as part of the urge to modernise. The ASEAN law making process in the post-independence era was predicated, as a former Secretary General of the ASEAN Law Association wrote, on the need to “provide guarantees for the safety of loans and investment capital” and the

¹ ASEAN currently comprises of Brunei, Indonesia, Laos, Malaysia, Myanmar, The Philippines, Thailand, Singapore and Vietnam. Of these, Brunei joined in 1984; Vietnam became a member in 1995; Laos and Myanmar were admitted in 1997. The rest, six of them, were signatories of the treaty from 1967. Cambodia’s membership is still under consideration.

transfer of technology from abroad for national development, as well as to meet new requirements triggered by changing values resulting from advances in modernisation²

There is an additional contemporary factor that impels members of ASEAN to revise their IP laws: they are expected to streamline their laws with that of the main industrial nations in order to live up to their treaty obligations under the World Trade Organisation (WTO) incorporating the Trade-Related Aspects of Intellectual Property Rights (TRIPs). Furthermore, while nearly all of ASEAN have made changes in their pre-TRIPs laws and are expected to effect the transition fully by 2000, there is a new desire to come up with an ASEAN perspective and, however surprising it might seem, a unified IP system for all of them. Although no fixed timetables have been drawn up, ASEAN leaders adopted, on 15 December 1995, the “ASEAN Framework Agreement on Intellectual Property Co-operation”, including the setting up of a regional patent and trademark office. That agreement was followed up on April 10-12, 1996 by another agreement reached in Thailand on a two-year action plan for IP co-operation. The action plan is hoped to lead to the establishment of a regional electronic information network, an IP database and a common system of protection for industrial designs, patents and copyright. Two expert groups were established at the same time to work on common patent and copyright systems, respectively.³

² See Tunku Mohammad Radhie, “Harmonization of Laws: Issues and Prospects in ASEAN Law, Technology and Development”, *ASEAN Law and Society Journal*, July-December 1986, Vol. 1, No.2, pp.50-61, at 52-3.

³ *World Intellectual Property Report*, vol.10, number 5, May 1996, at 127-8.

Since the onset of the Asian economic and financial crises, any talk of harmonisation has been confined to promoting the value of IP protection for, among other things, inter-ASEAN trade.⁴ Otherwise, no further details have emerged so far as to how the framework adopted in December 1995 for an ASEAN-wide IP system would translate into reality.

This article seeks to examine the prospect for ASEAN of adopting a single regional IP system. Section 1 formulates the international context against which such an effort should be assessed. Section 2 then surveys the domestic context for harmonization, namely the current comparative standings of the members of ASEAN in terms of economic interaction, the significance of, and divergences in, IP. Section 3 investigates, in view of the findings in Sections 1 and 2, whether the expressed desire for an ASEAN-wide IP system will materialize. The article concludes that ASEAN will find it very hard to innovate in the form and substance of IP they seek to adopt; that the only “safe” areas for any independent law making by ASEAN will be in removing, totally or partially, the territorial bases of IP and in introducing a single administrative machinery for an ASEAN-wide system.

1. The International Context for Harmonization of Intellectual Property

⁴ The Director of the ASEAN Free Trade Area Bureau was reported to have so stated at the Asean Intellectual Property Association conference in Kuala Lumpur, Malaysia, in May 1998: "Weak IP legislation and lack of enforcement of IP laws would limit the growth of intra-Asean trade in high technology goods and retard the development of an indigenous research and development sector." See, Vasantha Ganesan, "Call to protect region's intellectual property", *Business Times* (Malaysia), May 11, 1998, at 18.

Today, more than ever before, intellectual property (IP) rights are recognised world-wide. As at 31 January 1998, the membership of the Paris and Berne Conventions stands at 144 and 130 nations, respectively.⁵ It is only a small number of countries (among them Brunei, Laos and Myanmar from ASEAN) that remain without the full range of IP laws on their statute books.

Considering the growing interdependence of all countries in trade, the globalisation of economic forces and processes in general and the rise of information as a major factor in the competitiveness of industries and countries, the increasing similarity of economic laws such as IP across nations should be expected. Indeed, the tendency towards a levelling of legal regimes is becoming more and more commonplace. The principal actors in the international economic and trade order, the multi-national corporations (MNCs), not only benefit from the creation of a single legal regime across national or state borders, they also work towards extending it and making it permanent.⁶ The MNCs would not operate nor prosper without such a vital part of the infrastructure in any country as the legal system being available to them. Inevitably, one of the most critical benchmarks of any country's attractiveness as a haven for foreign investment and as a trading partner has long become the transparency of its legal system. Transparency has in turn been expressed in terms of the legal system's accessibility to foreigners (intent on doing business whether through foreign direct investment, FDI, or otherwise) and the availability of enforcement mechanisms in case legal rights have to be asserted.

⁵ See WIPO, *Industrial Property and Copyright*, 4th Year No.1, January 1998, at 40-45.

⁶ See generally, Gunther Teubner, ed, *Global Law Without a State*, Dartmouth, 1997.

The Significance of Intellectual Property to National Economies

Among the range of laws that impact on trade and commerce, IP has come to occupy a special place. Nevertheless, the significance of IP rights in single states has long been a subject of debate in many countries, whether industrially advanced or not. The economic and other ramifications of intangible information in general but particularly of those pertaining to technology have been studied from the 60s. These studies were propelled by US anxiety about the decline of its market share in the world and its loss of world leadership in the economic and technological fields. The role of IP in the economic and commercial standing of the US as against its trading partners was also studied. One such study⁷ concluded that there was no evidence to support or reject the view that IP was instrumental for the economic development of the US. It is unfortunate that more recent studies⁸ generally conducted for purposes of promoting US trade policy have merely assumed the value of IP for US industries and provide no objective assessment along the lines attempted earlier.

⁷ Machlup, Fritz, *An Economic Review of the Patent System*, US Congress, Senate Committee on the Judiciary, Subcommittee on Patents, Trademarks and Copyrights, Study No.15, Washington: Government Printing Office, 1958. He later summarised his findings in "Patents", in 11 *Encyclopaedia of the Social Sciences* 461 edited by D. Sills, 1968. He stated in that article: "Present knowledge does not enable us to make numerical estimates of the total social costs and benefits of the patent system. Apodictic assertions about the 'great' net benefit or net loss are without any foundation. Most of those who have made such assertions have not even considered the relative order of magnitude of the various items." *Ibid.*, at 470.

⁸ See for example, The President's Commission on Industrial Competitiveness, *Global Competition, the New Reality*, Washington D.C, 1985 which recommended strengthening IP rights internationally as "the priority item on the nation's agenda". *Ibid.*, at 52. See also R. Michael Gadbow and Timothy J. Richards (eds.) *Intellectual property rights : global consensus, global conflict?*, Boulder : Westview Press, 1988.

Other countries followed up the earlier US inquiry by undertaking the same into their systems. The Canadian,⁹ Australian¹⁰ and British¹¹ IP systems were scrutinized to establish their significance. Except for the British study, which established with certainty that the pharmaceutical industry was the main beneficiary of the patent system, none of the others suggested that IP was indispensable for technological advances. The Canadian and Australian studies concluded identically: that both countries did not benefit as much from their respective systems anywhere near as much as foreigners (particularly MNCs) did. Yet, in both of these countries, the fact that IP was not useful to the national economies but operated in accelerating the technological and economic domination of the particular country by foreign MNCs was down played. No one dared suggest that IP should be abandoned. Astonishingly, despite the anomaly uncovered by the studies, the advice given to the two countries was to keep the IP system intact in order to maintain the status quo and not to create problems in their international relations.

The experiences of other countries with lower levels of industrialisation and technical infrastructure could not be any different either. Almost all nations of Asia, Africa and Latin America have generally transplanted to themselves the types and quantum of IP rights recognised in the foremost industrial countries of the US, Britain and France.¹² Until the end of the Uruguay Round of GATT negotiations, practically every country had

⁹ Economic Council of Canada, *Report on Intellectual and Industrial Property*, 1971, Ottawa.

¹⁰ Mandeville, T.D., *et al*, *Economic Effects of the Australian Patent System: A Commissioned Report to the Industrial Property Advisory Committee*, Australian Government Publishing Service, Canberra, 1982.

¹¹ Board of Trade, *The British Patent System, Report of the Committee to examine the Patent System and Patent Law*, London:HMSO, 1970. See also, Taylor, C.T., and Z.A. Silberston, *The Economic Impact of the Patent System: a Study of the British Experience*, Cambridge University Press, 1973.

¹² For a discussion of that process see generally, Assafa Endeshaw, *Intellectual Property Policy for Non-Industrial Countries*, Dartmouth, 1996, especially at 98-116.

adopted a regime of IP laws although the range of rights recognised and the efficacy of the laws (in particular, their enforcement) differed in many ways.

The Impact of the TRIPs on National Intellectual Property Systems

US persistence to level the IP regime on an international scale and raise standards across the board paid off when the Trade Related Aspects of Intellectual Property Rights (TRIPs) was enshrined as part of the world trade regime agreed at Marrakesh, Morocco, in December 1993. Countries which could hardly keep up with the demands of the advanced industrial countries to bring down trade barriers have now the additional obligation of upgrading the IP regime in their respective jurisdictions. The Newly Industrialising Countries (NICs) that continue to knock on the doors of the OECD and stand at the edge of entry into the status of "developed country" face sterner scrutiny and pressures to "graduate" in the IP field too. This is no doubt part of the general thrust to compel them to finish graduating by meeting the spectrum of requirements that have expanded since the end of the Cold War by the inclusion of such species as human rights, the environment, trade unionisation (the so-called "social condition").

Signatories of the World Trade Organisation (WTO) must bridge any gaps between their existing IP laws and the requirements under TRIPs.¹³ Failure to do so would amount to a breach of international trade rules. The WTO agreement has thus transformed IP issues

¹³ Art. 72 of TRIPs makes it mandatory for members of WTO to adhere to the entire TRIPs. No exceptions are allowed. Still, some leeway has been given to countries in matters of enforcement. See Art.41(5) which leaves members to devise enforcement mechanisms without requiring them to allocate their resources in any specified way.

which seemed previously to belong to the legal domain into trade issues. The juxtaposition of IP with "other" trade issues has therefore had the effect of making IP an important instrument for international trade policy and practice.

It is to be recalled that all previous attempts to remove trade barriers throughout the world concentrated on quantitative or indirect measures that distort trade. The introduction of IP as an element in the creation of free trade in the entire world hence appears somewhat anomalous because IP is inherently prone to creating barriers rather than to removing them. IP is about protecting territory, dividing up markets and sealing walls between competitors. The recognition of this important characteristic of IP provided the impetus for the European Court of Justice's (ECJ) innovative approach of 'exhaustion of rights' in IP.¹⁴

However, notwithstanding increasing calls for an international competition law, TRIPs incorporates no equivalent principle that might be applied to the world, least of all in industrial countries. Neither is there any clear understanding among the proponents of sticking IP into the midst of trade issues as to how IP can operate to remove barriers or facilitate trade in any way. If anything, past practice among the industrialised countries continues unaffected by the introduction of TRIPs. In spite of the boost to the role of IP that TRIPs brought about, there has yet to be a major shift in thinking regarding how IP might be modified to remove the inherent barriers that continue to ensnare it so that world trade could ultimately become freer. Unfortunately, the basic issue of whether IP

¹⁴ The Court so ruled for the first time in the *Deutsche Grammophon v Metro-SB-Grossmarkte* [1971] E.C.R. 487.

can serve WTO's *raison d'etre* of opening up markets and extending them has yet to be grasped even before it can be tackled.

It is public knowledge that bilateral as well as multilateral IP agreements have helped the major industrial powers such as the US to open up markets for their industries and businesses but that has to be viewed against the exclusion from those markets, through the use of IP rights, of the industries of other less powerful nations. As things stand, major industries can be closed clubs for MNCs that possess distinct advantages in certain types of information. It is therefore doubtful if TRIPs will benefit other industries or countries when there is nothing they can do, under the present arrangement, to obtain that information legitimately in the open market and use it to establish themselves or cut their own corner. Consequently, if the use of IP is to avoid creating or maintaining barrier effects as it has been so far, the way in which TRIPs was formulated needs to be re-examined from the perspective of free trade. In other words, if TRIPs is to have an impact not just on the export potential of the major industrial powers, but on that of all nations universally, it must allow for freer flow of information.

Indeed, information will have to be allowed to move across boundaries freely before one can talk about the rights of those who generate and process that information being protected against imitators and counterfeiters. The rights of those who possess legally protectable information will have to be weighed against the availability of that information freely throughout the world in order for that protection to be legitimate and

economically sound. Free trade cannot have a meaning under conditions of monopoly of information in a world that is increasingly information-based and driven.

The expansion in world trade and the creation of a fully barrier-free global market will require dismantling all forms of barriers whether through IP, procurement policies of governments, in the creation or provision of services (communications and other infrastructure). In any case, global free trade in goods and services implies *free trade for all countries* and not the continuation of managed trade for some and borderless trading for others. It is most unfortunate that TRIPs has been deployed as a means of fostering the misconception that its implementation on a global scale will open up international trade for all.

The Expanding Scope of International Intellectual Property

It is common knowledge that the international IP regime is in a state of ferment. US unilateral moves to create new forms of IP that serve their need of safeguarding the lead they have attained in high-technology have been followed by their major competitors, the EEC and Japan, albeit grudgingly. This has been evident in the extension of copyright protection to computer programs, the use of *sui-generis* legislation (such as the Semiconductor Chip Protection Act of 1984) and the patenting of biotechnological innovations.¹⁵

The linking up of IP issues to trade issues and the resort to the GATT machinery, instead of

¹⁵ This was first established by the landmark US case, *Diamond v Chakrabarty* (1980) 100 S.Ct 2204.

WIPO, to push through the same US concerns (in the form of a 'universal system' of IP¹⁶) has precipitated reluctant EEC and Japanese acquiescence.

However, the EU (with Germany in the driving seat and as the more vocal mouthpiece) has emerged with a standpoint different from the US. Having completed its patent harmonisation in the 70s and being in the process of doing the same in other fields, the EU may yet have to confront fully the issue of a 'universal system' in the not too distant future. There is hardly any study that examines the alternatives available for the EU, Japan or the NICs in this direction. The Japanese seem to delight quietly at the prospect of the US initiatives being transformed into law with remarkable speed but in the apparent absence of any discord among the industrial and technology powers. Indeed, they might hope to assume the technological leadership widely believed to be slipping from the US.

In any case, ever since the TRIPs sought to update the dimensions of the then existing international agreements in IP (namely the Paris and Berne Conventions) and raise the minimum standards that had not been explicitly laid down in those conventions, the pressure to add to the scope and make implementation of IP the paramount task of the major nations has been mounting. A number of treaties signed before TRIPs await ratification. An example is the WIPO Treaty on Intellectual Property in Respect of Integrated Circuits (1989) signed by 8 nations (none of them from ASEAN) but ratified only by Egypt (as at January 31, 1998); that Treaty seeks to protect, not just masks as in the 1984 US law relating to microchips, but lay-out designs.

¹⁶ The latest proponent of a universal patent is U.S. Commissioner of Patents and Trademarks, Bruce Lehman, who called for the establishment of a global patent office "that takes advantage of technical advances". (*BNA Daily Report for Executives* 4 February 97; quoted by educause@educause.unc.edu).

There has also been a further 1989 protocol¹⁷ to the Madrid Agreement to enable the UK, USA and other countries which stayed outside of the former to join. If adopted, it could serve as a further means of streamlining and simplifying the recognition of industrial property rights. Besides, more tightening of the procedural steps that national offices must adopt will make those offices more uniform and the rules they follow more universal.

As regards obtaining international protection for trademarks or patents through a single application in a national office, they have always been available. The Madrid Agreement Concerning the International Registration of Marks adopted in 1891 and the Patent Cooperation Treaty (adopted in 1970) have enabled applicants to initiate the registration process in their home country and at the same time designate the countries in which they seek additional protection. The processing of an international application is centralised in the Madrid Agreement at WIPO and in the PCT at the designated patent offices (numbering nine at the moment). The purpose of allowing a single application and multi-country designation is to ease the burden on applicants though they could do this in accordance with the Paris Convention priority provision, that is country by country or piecemeal, as it were.

In the few years since TRIPs became an international yardstick to measure the compatibility of national and regional IP laws, other new treaties have been signed or ratified in a number of fields. Thus have emerged the WIPO Copyright Law Treaty of

1996, the Trademark Law Treaty (adopted on October 27, 1994) and the 1996 Treaty on Intellectual Property in Respect of Databases. Only 31 states have signed the Trademark Law Treaty and 51 states the Copyright Treaty, neither of which is yet in force. On the other hand, a few drafts are in the pipeline. Thus the WIPO Draft Patent Law Treaty (to supplement the Paris Convention and simplify procedures for grant) and WIPO Draft Treaty on the Settlement of Disputes in intellectual property have yet to be signed.

The supplements to the various treaties seek to extend the general scope of the specific IP forms already protected under the Paris, Berne or other Conventions or simplify the paths for recognition or enforcement of those rights. The importance of these new treaties, as far as ASEAN is concerned, is that many countries (contracting parties) have already incorporated the changes into their domestic laws. As a consequence, any harmonisation will have to start not from where the ASEAN member states find themselves but from the positions that their trading partners, particularly those in the WTO, have reached.

In sum, ASEAN harmonization will have meaning only if a start is made by adopting the contents of, if not all, at least the major international IP treaties whether relating to substance or procedure as the foundation. It is inconceivable for ASEAN to claw back the advances and extensions in international IP and yet remain within the international trading framework of the WTO or other regional blocs.

2. The Comparative Standings of Member States of ASEAN

¹⁷ Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

Were the member states of ASEAN only to contend with the international factors outlined in the previous section, their chosen task of forging a uniform, regional law and administrative structure would be relatively easy. However, the differences in economic standing of the members as well as the divergent levels in standards and complexity of IP laws among them suggest otherwise. Although it might be argued that the significance of IP laws for the national economies might not be far apart, it is difficult to maintain that ASEAN would transit to a single IP system on that account alone. Consequently, we will attempt to weigh the domestic factors separately in this section before considering, in section 3, the overall importance of both the international and domestic factors for any progress towards realising the projected harmonization of IP.

The Level of Economic Interaction within ASEAN

The decision to form ASEAN in 1967 emanated from a desire to secure the region's peace and stability from threats of Soviet and Chinese expansionism and not to embark on integration, whether political or economic, as such. But enough momentum had gathered by 1992 for a further decision to be made to form a free trade area, known as the ASEAN Free Trade Area (AFTA), by the year 2008. As such, therefore, economic integration was not a rationale, nor a precondition, for the proposed harmonization of IP in ASEAN, unlike in the EU.

Yet, the extent of intra-ASEAN trade and other forms of economic interaction as well as policies will have a bearing on the form, extent and speed of any harmonization, whenever that becomes a reality. For one thing, the five-yearly figures for intra-ASEAN trade during 1970-92 (Table 1, below) demonstrate that ASEAN interdependence on trade is very limited.

Table 1

Intra-ASEAN Trade 1970-1992

(Percentage of total ASEAN trade)

1970	17.1%	1980	15.5%	1990	16.6%
1975	13.2%	1985	17.9%	1992	18.3%

Source: Naya and Iboshi in Chia Siow Yue (1994) at 57.¹⁸

Regarding ASEAN policies towards foreign direct investment (FDI) and transfer of technology (TOT), Toshihiko Kawagoe and Sueo Sekiguchi write that “almost all countries regard FDI as an important instrument to develop their technology, promote industrialisation, enhance employment, accelerate regional development, and to earn foreign currency.”¹⁹ It is remarkable that the reliance on FDI includes the perception that technological advance will accompany it—something no one would have found credible

¹⁸ See S.F. Naya and P.I. Iboshi, "A Post-Uruguay Round Agenda for APEC: Promoting Convergence of North American and Asian Values" in Chia Siow Yue (ed), *APEC: Challenges and Opportunities*, Institute of Southeast Asian Studies, Singapore, 1994, pp.54-94, at 57.

¹⁹ Toshihiko Kawagoe and Sueo Sekiguchi, (eds.) *East Asian Economies: Transformation and Challenges*, Center for Asian and Pacific Studies, Seikei University, Tokyo; and Institute of Southeast Asian Studies, Singapore, 1995, at 110.

at the height of the Group of 77's exploits during the "North-South" confrontations at the United Nations Conference on Trade and Development (UNCTAD) in the 70s and 80s.²⁰

Even considering that manufacturing in the ASEAN economies was "facilitated by the massive inflows of foreign direct investment",²¹ the share of manufactured goods in the total export of Indonesia, Malaysia, the Philippines, Thailand and Singapore was 36, 44, 52, 64 and 73% respectively in 1990.²² Besides the economic structures of Indonesia, Malaysia, Philippines and Thailand are "more competitive than complementary...ASEAN economies are more complementary to the industrial countries (as well as to the Asian NIEs) than to each other. And each ASEAN country wants to protect its domestic industries from competition from neighbours."²³ The overall consequence is that ASEAN countries, except Singapore, are "not markets for each other's primary products. And they cannot supply each other's needs for technology and capital goods."²⁴ Singapore's status as the largest trading nation within ASEAN is exemplified by the fact that it captures 47.09% of intra-ASEAN trade in 1993; Malaysia comes a distant second with 25.98% followed by Indonesia with 13.43%.²⁵

²⁰ See, for instance, C.M. Correa, "Transfer of Technology in Latin America: A Decade of Control", 15 *Journal of World Trade Law* 388 (1981).

²¹ Chia Siow Yue, "Progress and issues in ASEAN economic integration", pp. 265-304, *Ibid.*, at 269.

²² Note 19, above, Table 6.3, at 182

²³ Note 21, above, at 267-9.

²⁴ *Ibid.*, at 270.

²⁵ *Ibid.*, Table 9.3, at 273.

The disparity in levels of industrialisation and the competitive standing of ASEAN economies inevitably translates into reluctance “to share markets” but an urge to protect “domestic industries from regional cooperation.”²⁶ The less developed of them tend to be

more inward looking and preoccupied with the basic development problems of unemployment, poverty and income inequality. They fear that premature competition for their industries will result in benefits biased in favour of the more developed members; the industrial competence of the latter will enable them to pre-empt the high value added industries and processes if industrial location was left to market forces under free trade.²⁷

Under these circumstances, any IP harmonization will clash with some of the member states’ policies of maintaining protection of local markets and industries. This is simply because harmonization of IP will have the inevitable effect of breaking down some of the barriers.

The Significance of Intellectual Property for Members of ASEAN

It must be stated up-front that the driving force of the changes in the municipal laws of the South East Asian nations in IP has not always been indigenous demand. Commercial and industrial concern have not been central to any of the new changes that were wrought at various times in the past. Since the Second World War in particular, the growing importance of the region to US commercial and investment interests and the commitments of the US military in the region could not but force a review of the legal climate in the region by way of fostering closer ties for the common cause. If IP laws figured at all it was with a view to attracting foreign capital and technology. As one writer put it some time ago, “While the five ASEAN countries have not at this point of

²⁶ *Ibid.*, at 282.

time attained the same level of industrialisation, it is nevertheless true to say that all five countries are in varying stages of industrialisation. All five countries are equally anxious to attract foreign investment in order to promote and accelerate the economic development in their territories.”²⁸

The statistics available for the years 1990-95 bear out this role of foreign IP in ASEAN. First we take up the applications and grants for utility models recognised in four member nations: Indonesia, Malaysia, the Philippines and Vietnam. Of these, only Vietnam appeared to have consistent records and recognition of utility models. The comparative decline in non-resident applications and grant in utility models in Vietnam suggest that the opening up of its economy to outsiders has had an impact in the IP sphere too. In terms of absolute figures, the highest number of applications (“A”) and grants (“G”) for residents were recorded in the Philippines (456 and 170 respectively) while the respective numbers for the other nations range from 27-64 and 8-42, respectively. Otherwise, the disparity in the available records prevents a more reliable analysis of the use of utility models in the respective member countries of ASEAN.

Table 2

Percentage of Applications for and Grants of Utility Models to Residents 1990-95

	1990		1991		1992		1993		1994		1995	
	A	G	A	G	A	G	A	G	A	G	A	G
Indonesia									38	70		
Malaysia											35	--
Philippines			96	96								
Vietnam	100	100	98	98	97	96	66	90	58	64	41	33

Source: WIPO, *Industrial Property Statistics* (years 1990-1995), Geneva

²⁷ *Ibid.*

²⁸ Chao Hick Tin, “Protection of Intellectual Property”, ASEAN Law Association 1982 General Assembly, *Report*, 25-29 October 1982, Kuala Lumpur.

The state of industrial designs differs to a certain extent both in the smaller number of nations that recognise them and involve themselves in their upkeep but also in their importance to the economies of those nations. It is worthy of note that the figures for industrial designs are generally higher than those for utility models. The range for resident applications for industrial designs extends from 193 to 481 for Thailand and from 420 to 1018 for Vietnam. The relevant figure available for the Philippines is 410.

Table 3

Percentage of Applications for and Grants of Designs to Residents in 1990-95

	1990		1991		1992		1993		1994		1995	
	A	G	A	G	A	G	A	G	A	G	A	G
Philippines			75	43								
Thailand	31	24	44	21	41	39	47	51	50	21		
Vietnam			99	98	99	99	95	97	88	93	90	87

Source: WIPO, *Industrial Property Statistics* (years 1990-1995), Geneva

It is easy to see from Table 3, above, that residents in Vietnam constitute the highest number of applicants and grantees of industrial design registration certificates. This might be explained by the fact that Vietnam has yet to receive applications from the outside world. Nevertheless, one can discern a small but gradual decline in the numbers towards the later years. The respective figures for Thailand indicate that residents account for, on average, less than half of the applicants and grantees.

The ratio of trade and service marks granted to residents in seven countries in ASEAN is indicated in Table 4, below.

Table 4

Percentage of Trade and Service Marks Applied for and Granted to Residents in 1990-95

	1990		1991		1992		1993		1994		1995	
	A	G	A	G	A	G	A	G	A	G	A	G
Brunei	0	1	0	0	2	1	1	1				
Indonesia	87	82	85	63	81	80			66	73		
Laos			1	?			0	0	2	2	3	5
Malaysia			45	?	26	19	49	24			49	25
Philippine			51	34								
Thailand	55	58	58	49	54	54	59	56	56	55		
Vietnam	28	14	36	34	23	23	25	25	21	26	24	22

Source: WIPO, *Industrial Property Statistics* (years 1990-1995), Geneva

One notices immediately that there are no figures for Singapore. This is because, the available figures are always given as a total of applications or grants for any specified year without dividing them up into the resident and non-resident portions. As a matter of interest, applications and grants in Singapore stood at 8791 and 7901 in 1990 and at 12577 and 9324 for 1995, respectively.

The ranges of applications in the seven ASEAN members extend from the lowest figure of 2 (for Laos in 1993) and 3 (for Brunei in 1991) to the highest of 27488 for Indonesia in 1992. The figures for Malaysia and Thailand are also comparatively as high as that for Indonesia. Table 4, above, shows that the respective percentage of resident applications and grants have been either stable (in Brunei, Malaysia and Thailand) or on the decline (the rest of them) over the years. The figures in Brunei and Laos indicate also that local applicants or grantees are too few, not to say, negligible. On the other hand, most applications and grants in Indonesia are to residents while those in Thailand are a clear majority. While the figures do not allow a firm conclusion regarding the emerging picture in the area of trade and service marks, one can safely remark that applications by and grants to non-residents is on the increase across the ASEAN region. Some of the

relatively less industrialized nations like Brunei, Laos and Vietnam have indeed received more non-resident applications than the rest. The figures for Vietnam reveal a hectic penetration of, or preparation for entry into, its market by non-residents.

We will now take up patents, another good indicator of the level of interest that foreigners might have in an economy. Table 5 presents the figures for five ASEAN members. Singapore does not appear among them simply because of the nature of figures available (as referred to above in connection with trade and service marks). It might be noted nevertheless, by reference to the single year (1995) for which data is partially available, that the applications received in that year from residents in Singapore constituted less than 1%. That figure does not of course make Singapore an exception. All the nations represented in the Table display a similarly low ratio of local applicants and patentees. They range from as low a figure as 1 (for Vietnam in 1993) to the highest of 16 (for Thailand in the same year and in 1994) for applications. The relative figures for grantees or patentees are a low of 1 (Malaysia in 1993) and a high of 20 (for Thailand in 1993).

Table 5
Percentage of Patents Applied For and Granted to Residents in 1990-95

	1990		1991		1992		1993		1994		1995	
	A	G	A	G	A	G	A	G	A	G	A	G
Indonesia			4	?	2	?						
Malaysia			4	?	6	1	7	1	6	1	3	2
Philippine			8	5								
Thailand	4	2	4	8	3	5	16	20	16	9		
Vietnam	12	2	6	5	41	54	1	2	0	3	0	5

Source: WIPO, *Industrial Property Statistics* (years 1990-1995), Geneva

The extraordinarily large figures for Vietnam in 1992 have no easy explanation, though the absolute figures they represent are not that significant (37 applications and 12 grants). The round figures for the rest of the nations in Table 5 will indicate the level of foreign interest in the respective nations. Thus the resident applications in Thailand jumped from 73 in 1990 to 634 in 1995, those in Malaysia from 106 in 1991 to 223 in 1994; those in Indonesia from 54 in 1991 to 80 in 1992; those in Philippine was 147 in 1991; those from Vietnam were 7 in 1990 and 23 in 1995.

Overall, the general picture that emerges from the contrast between resident and non-resident applications and grants in IP rights in ASEAN is an absolute domination by non-residents. In spite of the relatively high figures for residents in Thailand and Indonesia with respect to trade and service marks, the overwhelming sway in IP rights by non-residents is very clear. Even in the case of Thailand and Indonesia, it would not be surprising if the resident applications were from foreign right holders doing business in the two nations.

Perhaps the picture painted here is not typical of ASEAN alone as many NICs too display the same characteristics. But the reality of the situation is not matched by most official pronouncements (including those referring to the topic under discussion) which gloss over this aspect of ASEAN affairs or, even, create the impression that ASEAN are firmly in control.

Divergence in Intellectual Property among ASEAN

The diverse background in the origins and evolution of IP in the ASEAN member states was bound to find reflection in the divergent conceptions as to form and substance of IP. Owing to lack of space, we can only mention a few heads of comparison across ASEAN.

First, we will look at the general picture. Most members of ASEAN do not provide the entire spectrum of IP protection. The Philippines has been in the lead for a very long time in the relatively broader range of IP rights it recognised as compared to the other members of ASEAN. Indonesia, Malaysia, Singapore and Thailand have followed suit in filling the gaps by adding to the minimal IP rights or revising old ones from 1987 onwards. The rest of ASEAN (Brunei, Cambodia, Laos, Myanmar and Vietnam) are still in the process of either drafting new or adapting old IP legislation to bring themselves to the same levels as those in the leading pack. This process has been hastened by the advent of TRIPs and the newly assumed obligations of ASEAN states as signatories of WTO. One of the most recent examples is Indonesia which introduced changes to its IP laws in 1997: expansion of the scope of patentable subject-matter; recognition of well-known marks as well as service marks and geographic indications of origin; protection of rental rights and rights in performances. It is to be noted that the Philippines, Thailand, Malaysia and Singapore have done the same or more in the last couple of years.

The specific impact of TRIPs on each nation's pursuit to update national IP legislation will be beyond our scope. It would be sufficient for our purposes here to mention the general consequences of the thrust of TRIPs on ASEAN. Because of their obligations

under the WTO and the concerns of the major industrial powers regarding the divergence in enforcement of IP rights and the threat of piracy in each nation, the respective ASEAN members' national IP laws have been subjected to constant criticism. More often than not, international pressures on ASEAN governments to modify or enforce their IP laws play a large part. The most direct of these pressures are exerted by the United States Office of Trade Representative (USTR) through its annual investigation into trade practices of trading partners of the US. Thus the Philippines was rapped by the USTR in an out-of-cycle review for allowing computer software "decompilation" that is reverse-engineering.²⁹ The 1998 annual review of the USTR³⁰ has repeated the same critique against the Philippines and stated alleged shortcomings against other ASEAN nations, notably Indonesia (that the recent amendments "are not completely TRIPs-consistent").

We will now turn to the general variations between the ASEAN members in each form of IP. With respect to patent laws, it might be recalled that those laws have not been long in existence in the majority of ASEAN. Thus, Malaysia introduced one in 1983, Indonesia in 1989, Singapore in 1995. Although standards of novelty and inventiveness have long become identical to those in the industrialised countries, there are divergences and gaps not only within each national legislation but also as between them. Whatever may be the rationale, the major points of divergence among ASEAN relate to the scope of patentable subject matter (most excluding micro-organisms, pharmaceutical products and the like) and the extent of resort to compulsory licensing (to compensate for lack of working or unavailability of patented product or process in the national economy). Both the scope of

²⁹ The then USTR-designate, Barshevsky, so stated on 20 December, 1996; quoted by *World Intellectual Property Report*, Vol.11, No.2, Feb 1997 at 52.

patents and the use of compulsory licensing are increasingly being narrowed down in particular because of the ASEAN member states' obligation to make their laws TRIPs-consistent..

Besides the variations in the scope of patentability and compulsory licensing, there are different approaches towards minor inventions and their terms of protection as well as that for patents. Thus Indonesia accords protection to small product improvements through a 'Simple Patent' (obviously a "petty patent") for a one time of five years. Vietnam, on the other hand, grants protection for "Utility Solutions" for six years. By contrast, Malaysia recognises "Utility Innovations" for a period of five years but renewable for a further five. The Philippines recognises design patents (which includes utility models) and protects them for five years too but with a possibility of renewals for two consecutive periods of five years.

In copyright, the major point of variation between most national legislation is the extent of recognition of rights—rights in performances being one of the chief gaps until the spate of TRIPs-inspired changes were introduced very recently. Besides these, the boundaries and degree of fair use remain variegated. The need to make foreign works available to satisfy local demand and/or in local languages stands out as the main reason for this. While generous provisions in the national copyright laws which legitimised this practice in the past have been eroded gradually and somewhat restricted in recent months (the Philippines, Indonesia, Malaysia and Singapore being cases in point), the fact is that

³⁰ Available online at <http://www.ustr.gov/reports/index.html>.

there is no single uniform practice across ASEAN, save the traditional fair use exceptions one finds in legislation in the UK or France, for instance.

In trademark law, gaps remain as to the scope of registrability of trade marks and service marks, (the contentious issues of whether any colour, smell or shape could be protectable) the status of famous marks and what might be considered ‘use of a mark’ as a defence against removal for non-use. In terms of administration of trade or service marks, such provisions as that of the Trade Mark Law Treaty have yet to be discovered by ASEAN legislators.

As regards other forms of laws, the situation is as follows. In the protection of industrial designs, most of ASEAN lack any legal instruments or, at any rate, local laws. Thus, until very recently both Singapore and Malaysia relied on prior registration in the UK according to UK registered design law before allowing any local re-registration. On the other hand, animal or plant varieties are not protected in all of ASEAN. The state of trade secrets or confidential information is still undecided for many or governed by non-statutory law in those with a common law heritage. Laws relating to integrated circuits and digital forms of creativity (multimedia) have yet to be thought of in most nations.

The overall state of divergence and incoherence in IP laws of ASEAN is exemplified by the attitude towards parallel importing. The general trend in ASEAN has been towards allowing parallel importing although some countries have backtracked to prohibit it from time to time. This is often an indication of confusion between restrictions of imports on

the basis of the rights of IP owners and the legitimate prohibition of imports of infringing copies. In any case, the concern for a more open and barrier-free ASEAN market has not been served by the conflicting positions on parallel imports.

3. The Prospects for Harmonization of ASEAN Intellectual Property

Arguments have surfaced from time to time in the past in member countries of ASEAN for a system of IP laws that reflect national needs and culture. Thus a former Registrar of Trademarks of Singapore³¹ had counselled, at a WIPO organised seminar in Singapore, that the establishment of a patent system should be assumed very carefully: “Indeed much time and effort may be dissipated if the end result would be only to serve a mere handful of applications. As in all economies of scale one should evaluate both cost and effect and any new Patent processing system should be economically justifiable.”³² To prove his point he produced the following figures³³ on the number of patent applications annually submitted in Singapore between 1975 and 1980: 499, 689, 533, 635, 864, and 603, respectively. Of these figures, the applications from Malaysia or Singapore did not go beyond a maximum of 3 for Singapore and 6 for Malaysia.

The Registrar recommended the adoption of a patent system incorporating “the best features of the varied patent system in Japan, the United States and Europe” backed by an

³¹ Ang Koon Hian, “The Existing Patent System in Singapore and its Contemplative Development—As Seen from the Viewpoint of the Registry” in *Seminar on Patent and Trademark Licensing Singapore*, December 10-12, 1980, WIPO, at 4-13.

³² *Ibid.*, at 10.

³³ *Ibid.*, at 7-8.

“internationally recognised searching or examining authority.”³⁴ In the same breath, he suggested the adoption of a petty-patent system for Singapore,³⁵ an idea that has yet to be adopted. It may be noted that the Registrar did not suggest the postponement or, even, abandonment of instituting a patent system for Singapore by reference to the fact that its value for the local economy was not borne out by the figures he himself provided.

One writer³⁶ went beyond the needs of single states and proposed the harmonisation of industrial property for ASEAN through, among other things, inserting in the national laws of a provision stating that importation does not constitute working of a patented invention; a common standpoint regarding black lists in licensing agreements. Another commentator also called for “enactment of legislation providing for registration of uniform protection of intellectual property rights especially in the field of trademarks, patents, and designs extending to the whole territory.”³⁷

While maintaining that “it would be almost impossible to create a uniform legal system”³⁸ for ASEAN, because of their “varied socio-cultural and political background,” Radhie advised harmonizing the laws in certain fields to facilitate “cooperation in the economic, social and cultural fields as intended by the Bangkok Declaration of 1967.”³⁹ Yet, he suggested a step by step harmonisation in such “neutral” areas as trade and

³⁴ *Ibid.*, at 11.

³⁵ *Ibid.*, at 13.

³⁶ Wurjati Martosewojo, “Protection of Intellectual Property in Indonesia”, ASEAN Law Association 1982 General Assembly, *Report*, 25-29 October 1982, Kuala Lumpur.

³⁷ Wong Say Fong, “Protection of Intellectual Property in Malaysia”, ASEAN Law Association 1982 General Assembly, *Report*, 25-29 October 1982, Kuala Lumpur.

³⁸ Note 2, above, at 52-3.

³⁹ *Ibid.*, at 53.

business that do “not directly impinge upon the cultural sensitivities and legal consciousness of the member states.”⁴⁰

The conflict of interests surrounding the making of IP laws by countries in the regions is further illustrated by the nature of the submissions to the Singapore Parliament during the drafting stage of the Copyright Act 1987.⁴¹ Foreign interests were adamant that the proposed bill fell short of their requirements while local interests argued that it did not give them more leeway. Thus, among the foreign interests, the International Intellectual Property Alliance submitted that Singapore

has totally failed to create a climate conducive to the creation, distribution and trade in products and services dependent on the protection of intellectual property. Because of its failure to protect intellectual property, it has been stigmatised with the reputation as one of the world's leading pirate nations and its role and reputation in the world has suffered accordingly. The Government's position has resulted in the United States copyright industries having suffered significant damage due to uncontrolled piracy and for many years, Alliance members have sought to convince Singapore, to no avail, to remedy its woefully short-sighted policy.⁴²

The Alliance suggested that there be minimum statutory fines and prison terms; the elimination of the distinction between secondary and primary infringement as well as the exception given to those who do not have knowledge that any article they may be dealing with is infringing. The Alliance further suggested the need for clarification of cable programmes and performances as protectable subject matters as well as the limitation of fair-use provisions such as for education and home taping.

⁴⁰ *Ibid.*, at 54.

⁴¹ Report of the Select Committee on the Copyright Bill (Bill No.8/86), Presented to Parliament on 22nd December, 1986.

⁴² Paper S.C. No,19, *ibid.*, at A116-A125.

Among the local representatives of industries, the Singapore Chinese Chamber of Commerce & Industry was forthright about the necessity of adopting IP by Singapore while noting that "For the continued economic growth and development of Singapore, it is important that our local business community have access to intellectual properties [sic!] especially in scientific and technical works, of the developed countries at costs which we can afford [sic!]." ⁴³ It therefore suggested that the law make an exception for those who reproduce "intellectual works, subject of copyright, for non-profit making purposes, eg. promotional, charitable and educational." It added that works copied for "strictly personal use" should be exempted; so should reproduction of performances or for purposes of study and research "in all field of education." ⁴⁴ The Consumers' Association of Singapore, on its part, pleaded for changes in the bill that take into account the interests of the Singapore consumer, "principally the student", and sought to extend the area of fair use for educational purposes and to legalise parallel imports. ⁴⁵ The National University of Singapore Students' Union submitted similar views. ⁴⁶

We all know what became of the demands for provisions that took into account local or national development requirements. The residual concessions in the 1987 Act in Singapore or in the equivalent laws of the other countries of ASEAN (notably that of Indonesia, Malaysia and Thailand) have been removed systematically over time, particularly in the urge to come into line with those countries' commitments under

⁴³ *Ibid.*, Paper S.C.No.30, at A175-A179.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, Paper S.C. No.15, at A 87-A103.

⁴⁶ *Ibid.*, Paper 24, at A144-A147.

TRIPs. Lately, Vietnam too has entered into a bilateral arrangement with the US which will have the same ultimate effect. A glance at the most recent rush of legislation adding to (Vietnam), amending or revising (the original five ASEAN) the IP laws will establish that any room for local initiative or improvisation has been virtually eliminated. It would seem that a new era has opened in the making of IP laws in the ASEAN region as much as elsewhere: that of complete and unquestioning acquiescence to the onward march of international IP laws.

This is not to say that the march is without any resistance. Thus a more current call for asserting local or national demands concerning forms and substance of IP as against the relentless advance of international IP has been expressed chiefly on behalf of Malaysia. At the inauguration of the ASEAN Intellectual Property Association, the Minister of Trade and Consumer Affairs of Malaysia, Datuk Abu Hassan Omar, reportedly stated that "it was time ASEAN countries formulated their own system on the use of trademarks and patents, that would still suit ASEAN 's needs and expectations."⁴⁷ He added that ASEAN should self-regulate and co-operate among themselves "in setting up a system or systems compatible to the needs and culture of its member countries. We have to set our house in order and we have to lead and not follow all the time. Otherwise, others will come into the region to impose on us what they want done, which would be mainly beneficial to IP owners from outside the region." It is difficult to understand how the Minister could envisage such a course of action without at the same time calling for a drastic revision of the existing laws accompanied by a withdrawal from current international treaties, such

⁴⁷ Jeffrey Ramayah, "ASEAN needs own laws to 'protect IP rights'", *The New Straits Times* [Malaysia], 12.02.1996; accessed from the Down Jones News/Retrieval [Online] on May 4, 1998.

as the TRIPs. Nevertheless, we have no indication that the Malaysian proposal will serve as a basis for any radical transformation of the IP regime in ASEAN.

The obvious question for policy makers then is this: If international IP is advancing without any let up and ASEAN are bound, expected or pressurised to follow, should one even think of an ASEAN regional IP system? One can always deny or ignore the international developments in IP law making and seek to carry on as if nothing has changed. Such a view is implicit in the ASEAN Framework Agreement on Intellectual Property Cooperation.

The Framework Agreement envisages creating “closer cooperation” among the members in the making, administration and enforcement⁴⁸ of IP laws. The underlying objective of such a cooperation is stated as being to support the economic and technical advances in the region. Yet, the Framework cites at the same time the need to live up to TRIPs and the international obligations of the member states. It hardly requires pointing out that both TRIPs and the post-TRIPs extensions of, or additions to, international treaties are in the service of the strongest economies grouped in the OECD countries. Consequently, the ASEAN desire to create a patent and trademark system in conformity with the international IP regime but with a view to boosting the economic and technical advances in the region is rather baffling.

For one thing, it cannot be taken for granted that cooperation in making, administering and enforcing IP laws will automatically enhance the economic and technological

positions of the members of ASEAN. Quite the contrary! Any possible benefits to be derived from such a cooperation will not necessarily go to ASEAN; indeed, the real beneficiaries will be those countries that made it their business to push for extension and implementation of IP laws throughout the world and succeeded in doing so.

On the other hand, the fast pace in the development of the international IP regime has already pre-empted, to a large extent, any national law making, whether it be in the major industrial or the least industrial nations. The quick retreat and, eventually, total rout of the Andean Pact in the IP sphere was a consequence of that emerging reality in the early 1990s. Similarly, the desire for an ASEAN-wide IP system should be perceived more as an acquiescence to international developments than an attempt to blaze a new trail. As it is, many ASEAN members have acquired "uniform" laws by virtue of their accession to the international conventions as well the amendments they had to put through as part of their international trade obligations (WTO-TRIPs).

Therefore, if one can make any sense of the projected harmonisation, it should mean following closely and implementing the process set in train by TRIPs and the post-TRIPs arrangements. Just as other countries and blocs will gradually but surely be drawn into more and more "harmonisation", the ASEAN exercise of fashioning an exclusive IP system and dashing for some undefined uniformity will end up treading the beaten path.

Moreover, if the purpose of harmonization in ASEAN is to provide a level playing field for any possible IP-based industries that each member might have, that can be achieved

⁴⁸ Article 3, ASEAN Framework Agreement on Intellectual Property Cooperation.

just as well through accession to the existing international treaties. If, however, there is an imbalance or unequal relationship with the more powerful industrial nations that ASEAN need to redress, then harmonisation will only make it worse for them. If, as seems more likely and rational, the desire is for a more efficient administrative machinery that reduces waste and leads to a sharing of common resources such as trained personnel, that could be achieved even without harmonising the substantive aspects of the members' IP laws.

In the final analysis, ASEAN leaders need to address the underlying policy issues frankly. It is not difficult to see that, at this stage, members of ASEAN would be engaged very much in gap filling. Apart from the disparities within the domestic IP laws of the members of ASEAN, indicated briefly in section 2, a number of them has still not gained membership of the major international IP conventions. And this cannot be a revelation. ASEAN comprises of countries that have barely started the transition from laws of the colonial era (such as Brunei) as well as those which have embarked on forging a TRIPs-consistent regime.

Obviously, gap filling by members of ASEAN singly or as a region will eventually bring IP laws to the same level as international developments (the TRIPs arrangement included) necessitate. Whatever the content of those gap filling measures (substantive, procedural or administrative) might be, the approach will remain the same: however reluctant some members might be, they would have no option but to continue willy-nilly to operate within parameters developed in the more advanced countries (chiefly grouped in the

OECD) and to fill any gaps in their IP laws as a matter of course by reference to those countries' IP systems. Any success ASEAN might achieve in forging a common IP system will depend on a clear understanding of this.

4. Conclusion

On the surface, it may appear to members of ASEAN that they should stop reacting to external pressures and start becoming proactive and issue their own laws independently of international factors and developments. In so far as the ASEAN members, at least the more advanced among them, plan to leap into the league of the most industrialised in the world, there may seem to be no reason not to do that. At the very least, they may assume that they have the ability and power to decide whether or not to adjust their laws to meet international requirements at their discretion.

Yet, the sketch of international developments in IP undertaken in section 1 has demonstrated that no nation or group of nations can stay outside of them. The progress being made on all fronts, the unrelenting extensions in the substance of IP rights as well as the drive to "universalise" their administration leave no one in doubt that any deviation will have only one consequence: to be left out of the global economy and trade. This is simply because IP issues have been submerged in trade issues and no one may be able to undo that. Clearly, ASEAN members cannot opt to remain within WTO but seek to work out their own regional IP system commensurate with the demands of their respective economies, cultures and export performance. In short, their options would appear to be to

follow the lead of the major industries countries rather than set their own pace in IP at the world level.

Even where ASEAN "choose" to harmonize what can only be their adoption of international standards, they have serious issues to consider. Given the divergence in IP laws among members of ASEAN, success in such a "hamonisation" might not be in the actual range or scope of rights they recognise as a basis for a regional IP system, but in the achievement of a common minimal framework for all.

If ASEAN can develop a framework to be deployed both in raising existing levels of IP within some but also in introducing new standards of IP law and enforcement in others, that will be a major success. The varying scopes and complexity in the range of IP laws in ASEAN mean that any harmonisation will of necessity be a long drawn out affair. While the leading members will be expected to make their laws TRIPs-consistent by the year 2000, the task of raising the lowest common denominator in IP among the remaining members of ASEAN will take more time. Hence harmonization of ASEAN intellectual property, in the sense generally understood, will be a matter for the future.