

# Intellectual Property Law in Southeast Asia: recent legislative and institutional developments<sup>1</sup>

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## Abstract

Over the last few decades, countries belonging to the Association of Southeast Asian Nations (ASEAN) all had to revise their intellectual property systems. These revisions resulted at first from bilateral pressure of major trading partners such as the US and EU, then from the WTO-TRIPS Agreement and more recently from bilateral Free Trade Agreements. To observe the IP developments in ASEAN over this period is interesting, because this group of countries covers developed (Singapore), developing as well as least developed countries. All countries had to reform their outdated laws from the colonial era in very short time. However, in comparison to the early 1980s, important differences with regards to intellectual property policies have emerged in recent years.

This article will briefly sketch the developments in individual ASEAN countries and after that examine some broader trends in law making, IP administration, enforcement and the court system. It concludes that the ASEAN enlargement process has created a very diverse picture with regards to IP. With the fast pace of the legislative development, countries have been struggling to keep up with the creation of the institutional and administrative framework. Progress in the ASEAN harmonisation process has been limited. Statistics indicate that some of the new laws have been reasonably well received at the domestic level, while the patent sector remains foreign dominated.

## 1. Introduction

Developments in intellectual property law in ASEAN countries have attracted less attention over the last two decades than those of their more powerful and commercially attractive neighbours China, Japan and India. This is in spite of a rather long history of intellectual property principles in the region resulting from colonisation. The first intellectual property decree in the Philippines, for example, was introduced by the Spanish colonial power as early as 1833. Today, the region offers interesting insights into the relationship between intellectual property law and various stages of economic development. In spite of the Asian crisis of 1997, some ASEAN countries are undertaking serious efforts to establish themselves as players in the intellectual property field rather than remaining mere recipients of principles and policies developed elsewhere. This paper is intended as a follow up to a survey article written for the European Intellectual Property Review in the early 1990s<sup>3</sup>. It will present most recent legislative developments in intellectual property law and the difficulties in creating an institutional framework for the new laws. Some broader trends visible in the region will be identified towards the end of the paper.

## 2. Two Decades of Change

Several features have contributed to the rapid change in the ASEAN intellectual property landscape of the past few years. First, ASEAN was still much smaller in the early 1990s than it is now. Vietnam, Cambodia, Laos and Myanmar were not yet members. Since the enlargement of the mid-1990s, ASEAN has become a two-tier, less politically and economically unified organisation and it has become common to speak of the “old ASEAN six” (Indonesia, Malaysia, the Philippines, Thailand, Singapore and Brunei) and the “new ASEAN four”<sup>4</sup>. The enlargement can be seen as one of the reasons that attempts to harmonise intellectual property laws within ASEAN have been difficult and not made as much progress as some would have hoped for. The harmonisation attempts will be discussed further at the end of this paper.

Secondly, it is interesting to observe that some countries that had only a very basic legislation in the late 1980s have made significant progress in establishing an intellectual property system (for example Singapore and Malaysia) whereas others that had a more complete set of intellectual property laws have slowed down somewhat. Finally, the various intellectual property systems of ASEAN countries looked more similar to each other in 1990 than they do now. In the late 1980s and early 1990s, all countries that were members of ASEAN at the time had come under simultaneous pressures of the United States and European Union to introduce modern intellectual property systems and to reform their colonial legislation. As a result, all countries in the early 1990s were struggling with similar problems to implement intellectual property laws quickly. Today, ASEAN countries are at quite different levels of intellectual property development and a country such as Singapore faces very different issues and problems than, for example, Laos and Cambodia. Apart from the ASEAN enlargement, the more diverse ASEAN intellectual property landscape of recent years has of course also to do with the TRIPS Agreement and the reaction of various countries to it and more recently with the Free Trade Agreements concluded by the US and others with countries of the region, which have targeted those economies that are regarded as more successful.

## 3. Legislative and institutional reforms in individual countries

In this part, a brief outline of the major changes in national intellectual property systems of the region will follow. Until the second half of the 1980s, **Singapore** had no intellectual property system of its own and it relied on the re-registration of intellectual property rights protected in the UK. It established a set of intellectual property laws between 1987 and 2000 comprising copyright, trade mark and design acts and an act protecting the layout-designs of integrated circuits<sup>5</sup>. Different from other countries in the region, but perhaps typically for Singapore, the country has also managed to enforce the new rights effectively. Intellectual property law is now an important part of legal education and an IP Academy for research and training has been founded to assist with this task and to provide further training for the profession, the IP administration and interested members of the public. Singapore has ambitious plans in a number of areas that require intellectual property protection, in particular in

the field of biotechnology.<sup>6</sup> In this context, it is important to note that Singapore does not make use of the exception in Article 27.3(b) of the TRIPS Agreement that allows member states to exclude from patentability plants and animals other than micro-organisms and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. According to Ng-Loy<sup>7</sup>, the Select Committee scrutinising the Patents Bill reasoned that Patent Protection for plant and non-human animal varieties was necessary to encourage research and investment into horticulture, agriculture and biodiversity in Singapore. While under the terms of the Singapore-US FTA, Singapore was required to join the UPOV Convention, it is no longer allowed to use the exception of Article 27.3(b) of the TRIPS Agreement.<sup>8</sup> The country has meanwhile joined UPOV in July 2004.<sup>9</sup>

The legislation in **Malaysia** is also complete and largely TRIPS compliant<sup>10</sup>. The intellectual property administration in the country has improved considerably since the IP Office has been incorporated as a body corporate and a statutory body in 2003.<sup>11</sup> The new form of organisation gives the Malaysian Intellectual Property Office (MyIPO) more freedom to regulate its own affairs with regards to its employees and the use of its funds<sup>12</sup>, although the office remains under the directions and supervision of the Minister of Domestic Trade and Consumer Affairs<sup>13</sup>. Problems remain in the enforcement sector and with the judiciary. Statistics show that the Malaysian courts are overloaded and backlogged<sup>14</sup>. As in other countries of the region, discussions are underway to form a specialised intellectual property court to solve this problem. And while serious efforts have been made to improve the enforcement of intellectual property rights, Malaysia is still struggling with its reputation as the world's most significant producer/exporter of pirated optical disk entertainment software<sup>15</sup>. Malaysia has strong ambitions in the fields of information technology and biotechnology. The multimedia super corridor in Cyberjaya on the outskirts of Kuala Lumpur, which provides favourable conditions and tax advantages for IT companies, is well known. The legal framework for the further development of the IT sector improved at the end of the 1990s with the enactment of the Digital Signature Act, the Computer Crimes Act and the Telemedicine Act, all of 1997, the Communications and Multimedia Act of 1998, and various amendments to the Copyright Act.<sup>16</sup> The latest mega project of the government is BioValley Malaysia, a similar project to Cyberjaya in the field of biotechnology, which is supposed to become operative in 2006. This follows the establishment of a National Biotechnology Directorate (BIOTEK) under the Ministry of Science, Technology and Environment (MOSTE), which in turn was followed by the establishment of Biotechnology Cooperative Centers (BCC).<sup>17</sup>

**The Philippines** is the country with the longest tradition of intellectual property protection in the region, reaching back to decrees introduced by the Spanish colonial power in the early 19<sup>th</sup> century<sup>18</sup>. After a period of IP protection via Presidential decrees during the Marcos regime, the Philippines was the first country in Southeast Asia to adopt a comprehensive intellectual property code following WIPO models in 1995. The Code covers patents, utility models, trade marks and geographical indications, copyright, industrial designs, layout designs of integrated circuits and undisclosed information. There is separate legislation providing for plant variety protection since 2002.

**Thailand** is a country where intellectual property has generated much controversy. In the late 1980s, the debate about controversial changes to the Copyright Act to strengthen the position of rights holders even led to a dissolution of parliament and the calling of new elections<sup>19</sup>. The discussion subsequently shifted to patents and pharmaceuticals during the 1990s. In view of the AIDS crisis in Thailand, the government was much criticised for failing to use existing compulsory licensing mechanisms for pharmaceuticals because it feared a negative impact on foreign investment<sup>20</sup>. More recently, Thailand has made headlines by establishing the region's first specialised court for intellectual property and international trade law in 1996<sup>21</sup>. Interestingly, and as a significant diversion from the country's civil law tradition, the court has been allowed to draft its own rules of court rather than to effect changes through an amendment of the civil and criminal procedural codes. Classical common law remedies such as Anton Piller orders and interlocutory injunctions drafted along the lines of the *American Cyanamid* decision of the House of Lords in the UK have been added to the repertoire of the court. The court is not completely specialised on intellectual property matters, because it has also been given responsibility for international trade law to counter initial fears that it would not generate a sufficient workload. Statistics show that this fear was unfounded. The workload of the court almost doubled between 2000 and 2004, although the majority of the intellectual property cases were criminal cases rather than civil suits.<sup>22</sup>

**Indonesia** completed the main parts of its intellectual property legislation during the 1990s and introduced a complete new set of laws between 2000 and 2002 to become TRIPS compliant<sup>23</sup>. As so many other areas of law, intellectual property development has also been affected by the political and economic upheavals the country has been going through since the late 1990s. On the one hand, piracy rates have been on the rise again due to increased poverty and the ease with which money can be made from pirated products. On the other hand, the greater political openness and diversity has also meant that the task force approach of the past, where intellectual property reforms could be pushed through easily without worrying about opposition, is no longer as easy. As in the past, the implementation of the laws remains to be hindered by a large number of implementing decrees that often take years to be issued<sup>24</sup>. Political liberalisation in Indonesia has also meant decentralisation and the transfer of greater decision making powers to the provinces and districts. These reforms have also had some effect in the intellectual property field. The government has finally introduced the long promised branch agencies of the intellectual property office by authorising local branch offices of the Ministry of Justice to receive applications for the registration of intellectual property rights. Available since 2001, the submission of applications at such branch offices has been particularly popular with trade mark owners<sup>25</sup>.

With the most recent changes to the Indonesian intellectual property legislation, intellectual property cases dealing with patents, copyright, trade marks, industrial designs and the layout designs of integrated circuits are now being decided at first instance by the Commercial Courts and no longer by the District Courts. The District Courts remain responsible, however, for criminal cases, plant varieties, trade secrets and for border control measures under Law No. 10 of 1995 on Customs Matters. The Commercial Courts are not completely specialised on intellectual property matters, but they cover also bankruptcy cases. In fact, they were created as an emergency measure in the immediate aftermath of the Asian Crisis to deal with a wave of

bankruptcies. At the time, the old colonial Bankruptcy Regulation was amended and a new Commercial Court under the supervision of the Supreme Court established. Initially, the court dealt with bankruptcy cases only, but Article 280(2) of the amended Regulation authorised the government to extend the jurisdiction of the new Court to other areas of commercial law. The new intellectual property laws enacted between 2000 and 2002 made use of this opportunity. After the first Commercial Court had been established at the District Court of Central Jakarta, four further Commercial Courts were established by Presidential Decree in Surabaya, Semarang, Medan and Ujung Pandang.<sup>26</sup>

The Commercial Courts have received mixed reviews in the media for their decisions, in particular in bankruptcy cases<sup>27</sup> and to a much lesser extent in intellectual property cases<sup>28</sup>. Overall, however, and in particular in the early years of the court's existence, IP practitioners in Jakarta were reasonably content with its performance. Some indication of the performance of the court can be gleaned from case collections of intellectual property decisions of the Central Jakarta Commercial Court, which have been published by commercial publisher PT Tatanusa.<sup>29</sup> With a few notable exceptions, the court decisions were largely consistent and certainly much speedier than in previous years<sup>30</sup>. There is a similar development regarding appeal cases at the Supreme Court level. Here, cases in the past took many years to reach a decision<sup>31</sup>, whereas now they take on average four to five months.<sup>32</sup>

**Brunei** as the last of the “old ASEAN six” is a small and oil-rich country and obviously not a major player in intellectual property matters at this stage. It replaced the colonial laws providing for local re-registration of UK rights during 1999 and 2000 with a new Trade Marks Act and with Orders on Patents, Copyright, Industrial Designs and Layout-Designs of Integrated Circuits.

If we then turn from the more developed ASEAN Six to the new members of the ASEAN Four, the picture is more similar to that presented by some of the old ASEAN members some fifteen years ago. **Vietnam** has the most advanced system of the newcomers. It began to move away from socialist style inventor certificates in 1995, when it took the unusual step of incorporating a framework legislation on intellectual property rights into its new Civil Code. Part 6 of the Civil Code has chapters on copyright, industrial property and on technology transfer. However, the legislation is really a skeletal framework only. For details, one has to look further to a large number of implementing decrees. The decrees are not always consistent, sometimes they contradict each other and at other times they overlap leading to uncertainties in the application of the law. Therefore, the government has prepared a comprehensive legislation in the form of an intellectual property code. The Vietnamese National Assembly passed the new Intellectual Property Law at the end of 2005 and it will come into force in July 2006<sup>33</sup>. Vietnam also acceded to the Berne Convention at the end of 2004, thereby completing the international protection of intellectual property rights in the country.

The scope of the new legislation is extraordinarily wide<sup>34</sup>. In 261 articles, it covers not only the classical areas of intellectual property such as copyright (Part Two of the Law), trade marks, industrial designs and patents, but also business secrets and plant varieties. While plant variety protection is outlined in a separate part, perhaps one of the most difficult parts of the law is Part Three, which deals with all “industrial

property rights” together. In the process, the discussion of the law constantly shifts from one subject matter to the next, making it a difficult legislation to read and to apply. These various subject matter parts are framed by a Part One with General Provisions and a Part Five on Enforcement of Intellectual Property Rights, both applying to all the other parts of the law. The general first part also includes broadly worded exceptions to intellectual property protection, such as refusing protection where IP rights are “contrary to social interests” (Article 8(3)) and allowing compulsory licences to ensure “other interests of the nation and society” (Article 9(2)). The new IP law will also bring changes to Vietnam’s IP enforcement structure, which is currently largely a system of administrative enforcement.

It is interesting to note that Vietnam and Laos are not yet members of the WTO, but Cambodia and Myanmar are already members. To become TRIPS compliant, **Cambodia** has enacted a complete set of intellectual property laws in 2002 and 2003. In 2002, it adopted a Law concerning Marks, Trade Names and Acts of Unfair Competition and in 2003 a Law on Patents, Utility Model Certificates and Industrial Designs as well as a Law on Copyright and Related Rights.<sup>35</sup> According to press reports and WIPO documents, **Myanmar** is about to enact a comprehensive National Law on Intellectual Property Rights, for which WIPO has provided advice and technical assistance<sup>36</sup>. The new law will replace the Copyright Act of 1911 and a basic registration system for trade marks under Direction 13 of the Registration Act.<sup>37</sup> **Laos currently** has in place two decrees of the Prime Minister on the protection of trade marks and patents. Responsible for intellectual property matters in Laos is the intellectual property division of the Science, Technology and Environment Agency (STEA). A comprehensive new law covering all areas of intellectual property is in preparation.

## 4. Broader trends in intellectual property protection in ASEAN

From the previous survey, some broader trends can be identified:

First, at least on paper, TRIPS and the other international agreements have led to a shift in intellectual property law from “rule by decree” to “rule of law”. With low numbers of domestic applications, the importance of foreign investment and rising licensing fees, intellectual property and technology transfer law of course affects the development plans of governments in developing countries. In the past, a preferred way to deal with this was to introduce only as much protection as was absolutely necessary in the form of government regulations that did not need the approval of parliament and did not attract much public discussion. They used to leave a lot of discretion to government bureaucrats implementing the regulations and they could easily be amended or changed. Under these circumstances, the transparency of the various national systems was low. While it seems unlikely that government preferences for a rather obscure system have really changed, the TRIPS obligation to increase transparency of intellectual property systems has had the result that crucial pieces of legislation and court decisions are now made publicly available<sup>38</sup>, generating much more debate in public. Importantly, various NGOs and local private sector

lobby groups have entered the arena, so that intellectual property protection is no longer an exclusive discussion between foreign rights holders and development oriented governments.

Secondly, it is obviously difficult and a time consuming process for developing countries with insufficient administrative resources to create the rather sophisticated administration that an intellectual property rights system requires. This concerns first of all IP offices that are usually part of the government and as such pay wages that cannot compete with the private sector. Under the circumstances, it is difficult to attract technically qualified personnel. In this sense, the recent incorporation of the Malaysian IP Office is an interesting development. It seems that one important consideration for this step was to provide more financial incentives to examiners, who are now supposed to become stakeholders in the efficient performance of the office.

There are further concerns about the slow development of the IP profession in general and of the patent attorney profession in particular. In those countries with more developed IP systems, specialised training programs for the profession are now becoming available. Indonesia introduced a new registration system for intellectual property consultants in January 2005, under which patent agents registered under the previous system could re-register until June 2005<sup>39</sup>. The registration requirement now extends to all parts of the IP system, which are administered by the Directorate General of Intellectual Property Rights<sup>40</sup>. Applicants must be Indonesian citizens with permanent residency in Indonesia, pass an English test and follow a training course for intellectual property consultants, which DGIPR has outsourced to the university sector.

As far as university programs on IP in the main curriculum are concerned, there is equally mostly a lack of good undergraduate and postgraduate programs. This in turn leads to a lack of knowledge about IP among practitioners and judges and to a lack of materials such as teaching materials, commentaries, journals and textbooks. The lack of opportunities for specialisation has been a particular problem in the court system. Thailand's specialised IP court is often regarded as a way out of this problem and the establishment of specialised courts is now being considered by other countries in the region such as Malaysia and Vietnam.

Thirdly, if the judiciary and administration is problematic because of low specialisation and non-competitive salaries, there is an even greater problem with the police and other parts of the enforcement structure. In relatively poor countries often shattered by sectarian violence, the enforcement agencies are overstretched and have to deal with issues more pressing than violations of intellectual property rights. At the same time, the Asian crisis has thrown many people out of seemingly secure jobs in countries without much social security. Anyone with a tape recorder or a CD burner can produce cheap pirated material for the sale on the local market, so it is hardly surprising that piracy rates have gone up again in recent years. In some countries, private sector organizations and foreign companies have now begun to establish self-help groups rather than to rely on the enforcement agencies. The US government has heeded the call of its music, film and media industry and it has been pressing governments in the region to stop optical disk piracy. The government of Malaysia has taken the call seriously and enacted an Optical Disks Act in 2000. Together with the Trade Descriptions (Original Label) Order of 2002, the Act provides for a

licensing system for optical disk manufacturing in Malaysia. Only authorised copies bearing a hologram available from the Enforcement Division of the Ministry of Domestic Trade and Consumer Affairs are legal copies that may be displayed and sold on the Malaysian market. Infringing copies can be easily identified and confiscated by the enforcement authorities. In spite of these efforts, the International Intellectual Property Alliance (IIPA) has criticised the system as too bureaucratic and as not effectively enforced<sup>41</sup>. But even if the success of the legislation in Malaysia is limited in the eyes of international investors, the efforts by the Malaysian government have put pressure on other countries in the region with high optical disk piracy such as Indonesia. IIPA reports now indicate that some optical disk factories have relocated from Malaysia to Indonesia. Indonesia has issued a Government Regulation to combat the problem in 2004, but this decree as well has been criticised by the IIPA as deficient<sup>42</sup>.

Fourthly, the TRIPS plus agenda that is often part of FTAs with the developed economies needs to be considered. The US, China, Japan and Australia are the most frequent partners in current FTA negotiations with Southeast Asian partners. Of these countries, Australian FTAs or draft FTAs with Southeast Asian countries so far contain for the most part only vaguely defined obligations and declarations of goodwill regarding intellectual property rights<sup>43</sup>. As is well known, however, the IP part in US American agreements is very detailed. It is the more sophisticated economies of Southeast Asia that have been targeted as partners for FTAs. In particular the FTA between the US and Singapore is widely regarded as an agreement that might become the blueprint for other agreements in the region. Apart from the extension of the copyright term to 70 years, it contains the familiar anti-circumvention and rights management provisions, as well as stricter liability of internet service providers for putting infringing material online. It further offers patent term extensions in various instances of delays, for example delays caused by the Health Services Authority in granting marketing approval for a pharmaceutical product<sup>44</sup>.

With TRIPS plus protection now on the agenda in the negotiations with the more advanced economies of the region, while the less developed countries are still struggling to introduce a basic IP system, there is likely to be a further widening of the gap between the “old ASEAN six” and the new “ASEAN Four”, although Vietnam might be able to catch up more quickly than the others of that group.

Fifthly and finally, how much progress has been made with the earlier mentioned attempts to harmonise the intellectual property laws of the region? At the height of the Asian economic miracle, the ASEAN governments concluded a Framework Agreement on Intellectual Property Cooperation in 1995. Rather ambitiously, the establishment of a common Patent and a common Trade Mark Office like in Europe was envisaged at the time as one of the ultimate goals<sup>45</sup>. The creation of ASEAN standards and practices was a further goal. The Agreement created the ASEAN Working Group on Intellectual Property Cooperation and two sub-committees on trade marks and patents respectively.<sup>46</sup> The various working groups proposed in two concept papers the adoption of regional filing systems where applicants will be able to file their applications in any ASEAN office acting as a receiving agency and forwarding the application to other designated offices. The working groups succeeded in developing drafts of regional filing forms for trade marks, but progress in the introduction of the system has been slow. Several factors seem to be coming together

here: first, the fear of the relatively new intellectual property offices in the region to lose influence and important sources of income; secondly, for the same reasons the considerable opposition from local practitioners; and thirdly, the argument that a regional system would do not much more than what could be achieved via a multilateral system such as the PCT of which most countries of the region are either members or likely to become members in the near future.<sup>47</sup> The most recently adopted Intellectual Property Right Action Plan of ASEAN at the summit in Vientiane for the period 2004-2010 confirms some of ASEAN's earlier cooperation goals, but shows altogether a less ambitious agenda with the focus for the time being on simplifying and harmonising national procedures and creating opportunities for enhanced cooperation.<sup>48</sup>

## 5. Conclusion

While a smaller ASEAN at the beginning of the 1990s consisted of countries at very similar levels of intellectual property protection, the picture of intellectual property protection in ASEAN is now much more diverse. An important reason for this is the enlargement of ASEAN that has added countries classified as least developed such as Laos and Myanmar. In addition, Singapore has achieved developed country status and older members of ASEAN such as Indonesia have been preoccupied with political and social problems, so that ASEAN members have recently been drifting in different directions in intellectual property developments. Not surprisingly, regional harmonisation efforts have not been making much progress under the circumstances.

Legislative reform is proceeding at a fast pace, particularly in view of the original 2006 deadline for TRIPS compliant legislation for the least developed country members and with the attempts of Vietnam to become a member of the WTO in the near future. A comprehensive IP Code including almost all fields of intellectual property law seems to become a preferred option, but, as the example of Vietnam shows, such a document needs to be carefully drafted.

Finally, the countries of the region are particularly pressurised to set up the institutions supporting the intellectual property system often within a very short time frame. Again, specialisation has been the preferred solution and attempts have been made to separate intellectual property to some extent from the general administrative and legal system. Examples for this development are the specialised intellectual property and international trade court in Thailand, which has been followed by semi-specialised commercial courts in Indonesia and the Philippines, while other countries are considering the introduction of a more specialised court system. At the administrative level, the IP administration is now in some countries semi-privatised with the aim of increasing efficiency and creating more attractive salary levels.

Because of the diversity of the more recent experiences it seems difficult to come to general conclusions about the overall efficiency of the various systems and the acceptance of the new institutions by the general population. Statistics and the relatively high and increasing number of domestic registrations indicate that parts of the intellectual property system, such as trade marks, designs and copyright, have been fairly well received in the older ASEAN countries, while the field of patents remains foreign-dominated.

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- <sup>1</sup> This is a revised version of a paper originally presented at the Second International Symposium on Information Law “Alternative Frameworks for the Validation and Implementation of Intellectual Property in Developing Nations”, History and Governance Research Institute, Information Law Research Group, University of Wolverhampton, UK, 3 February 2006.
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- <sup>3</sup> Christoph Antons, ‘Intellectual Property Law in ASEAN Countries: A Survey’, in: *European Intellectual Property Review* Vol 13 Issue 3, March 1991, pp. 78-84
- <sup>4</sup> S.S.C. Tay and J.P. Estanislao, ‘The Relevance of ASEAN: Crisis and Change’, in: S.S.C. Tay, J.P. Estanislao and H. Soesastro (eds.), *Reinventing ASEAN*, Institute of Southeast Asian Studies, Singapore 2001, pp. 14-16
- <sup>5</sup> For details see Ng-Loy Wee Loon, ‘Singapore’, in: C. Heath (ed.), *Intellectual Property Law in Asia*, Kluwer Law International, London 2003, pp. 291-306.
- <sup>6</sup> S. Chaturvedi, ‘Singapore Strategises Biotechnology for Development’, in: S. Chaturvedi and S.R. Rao (eds.), *Biotechnology and Development: Challenges and Opportunities for Asia*, Institute of Southeast Asian Studies-Academic Foundation, Singapore and New Delhi 2004, pp. 231-267
- <sup>7</sup> Above note 4, p. 294
- <sup>8</sup> Loy Wee Loon, ‘The Report on Singapore’, paper presented at the conference ‘Recent Developments in & Enforcement of Asian IP Law’, Fordham University School of Law, IP Academy Singapore, New York, 14 April 2004, p. 15
- <sup>9</sup> See the list of members on the UPOV website at <http://www.upov.int/en/about/members/pdf/pub423.pdf>, accessed on 10 April 2006.
- <sup>10</sup> For details see D. Goon, ‘Malaysia’, in: C. Heath (ed.), *Intellectual Property Law in Asia* (above note 4), pp. 307-336
- <sup>11</sup> See Section 3 and 33 of the Intellectual Property Corporation of Malaysia Act 2002.
- <sup>12</sup> Parts IV and V of the Intellectual Property Corporation of Malaysia Act 2002.
- <sup>13</sup> See Sections 6(2), 8(2), 9(e), 10, 11(1), 14, 31(2) and (3), 34 and 35 of the Intellectual Property Corporation of Malaysia Act 2002.
- <sup>14</sup> See the inaugural report of the Superior and Subordinate Courts in Malaysia at [http://www.kehakiman.gov.my/buku\\_laporan.html](http://www.kehakiman.gov.my/buku_laporan.html), accessed on 27 August 2005.
- <sup>15</sup> International Intellectual Property Alliance, *2005 Special 301 Report: Malaysia*, at <http://www.iipa.com/rbc/2005/2005SPEC301MALAYSIAreview.pdf>, accessed on 27 August 2005, p. 357.
- <sup>16</sup> Khaw Lake Tee, *Copyright Law in Malaysia*, 2<sup>nd</sup> ed., Malayan Law Journal, Kuala Lumpur 2001, pp. 10-11; Muhammad Rais Abdul Karim and Nazariah Mohd Khalid, *E-Government in Malaysia*, Pelanduk Publications, Subang Jaya 2003, in particular Chapter 10, pp. 163-182. See also *Excerpts from the Speeches of Mahathir Mohamad on the Multimedia Super Corridor*, Pelanduk Publications, Subang Jaya 1998.
- <sup>17</sup> Hassan Mat Daud, ‘The Current and Future Outlook of Agricultural Biotechnology in Malaysia’, in: S. Chaturvedi and S.R. Rao, above note 6, pp. 143-150.
- <sup>18</sup> I.S. Sapalo, *Background Reading Material on the Intellectual Property System of the Philippines*, World Intellectual Property Organization, Geneva 1994; A. F. S. Fider, ‘The Philippines’, in: C. Heath (ed.), *Intellectual Property Law in Asia* (above note 4), pp. 363-390
- <sup>19</sup> C. Antons, ‘Intellectual Property Law in ASEAN Countries’, above note 3
- <sup>20</sup> J. Kuanpoth, ‘Thailand’, in: C. Heath (ed.), *Intellectual Property law in Asia* (above note 4), pp. 337-362
- <sup>21</sup> V. Ariyanuntaka, ‘TRIPS and the Specialised Intellectual Property Court in Thailand’, in: *International Review of Industrial Property and Copyright Law*, Vol 30 No 4/1999; A. Morgan, ‘Comment: TRIPS to Thailand: The Act for the Establishment of and Procedure for Intellectual Property and International Trade Court’, in: *Fordham International Law Journal*, Vol. 23 March 2000.
- <sup>22</sup> C. Antons, ‘Specialised Intellectual Property Courts in Southeast Asia’, in: A. Kur, S. Luginbühl and E. Waage (eds.), “...und sie bewegt sich doch!” – Patent Law on the Move, Carl Heymanns Verlag, Cologne-Berlin-Munich 2005, p. 295
- <sup>23</sup> For details see C. Antons, ‘Indonesia’, in: C. Heath (ed.), *Intellectual Property Law in Asia* (above note 4), pp. 391-428

- <sup>24</sup> C. Antons, 'Harmonisation and Selective Adaptation as Intellectual Property Policies in Asia', in: C. Antons, M. Blakeney and C. Heath, *Intellectual Property Harmonisation Within ASEAN and APEC*, Kluwer Law International, The Hague 2004, pp. 113-114
- <sup>25</sup> According to statistics on the website of the Directorate General of Intellectual Property Rights (<http://www.dgip.go.id>, accessed on 19 August 2005)
- <sup>26</sup> As to the institutional history of the court, see C. Antons, 'Specialised Intellectual Property Courts in Southeast Asia', above note 22, p. 291.
- <sup>27</sup> An infamous decision was the bankruptcy declaration of highly profitable Canadian life insurance company Manulife in 2002, see R. Robison and V.R. Hadiz, *Reorganising Power in Indonesia: The Politics of Oligarchy in an age of Markets*, RoutledgeCurzon, London 2004, p. 265, fn.1.
- <sup>28</sup> T. Mapes, 'Battle to Reclaim a Brand', *Far Eastern Economic Review*, 22 May 2003, pp. 36-37; G. Suryomurcito, 'Intellectual property laws still weak', *The Jakarta Post*, 31 January 2005
- <sup>29</sup> *Himpunan Putusan-Putusan Pengadilan Niaga Dalam Perkara Merek*, Vol. 1 (2002), Vol. 2 (2002), Vol. 3 (2004), Vol. 4 (2005) and Vol. 5 (2005), all published by PT Tatanusa, Jakarta.
- <sup>30</sup> C. Antons, 'Specialised Intellectual Property Courts in Southeast Asia', in: A. Kur, S. Luginbühl and E. Waage (eds.), "...und sie bewegt sich doch!" – *Patent Law on the Move, Festschrift für Gert Kolle and Dieter Stauder*, Carl Heymanns Verlag, Cologne-Berlin-Munich 2005, pp. 287-299
- <sup>31</sup> See for example the "Scotch Whisky" decision of the Supreme Court No. 2564K/pdt/1994 of 29 July 1996, deciding an appeal filed in October 1988 and the "Scooby Doo" decision of the Supreme Court No. 3879K/Pdt/1991 of 31 August 1995, deciding an appeal filed in April 1989, both printed in S. Gautama and R. Winata, *Pembaharuan Merek Indonesia (Dalam Rangka WTO, TRIPS)*, PT Citra Aditya Bakti, Bandung 1997
- <sup>32</sup> Four volumes of Supreme Court decisions have recently been published, see Tim Redaksi Tatanusa (eds.), *Himpunan Putusan-putusan Mahkamah Agung dalam Perkara HaKI*, PT Tatanusa, Jakarta, Vol. 1 (2003), Vol. 2 (2004), Vol. 3 (2004) and Vol. 4 (2004).
- <sup>33</sup> 'Vietnam: Assembly adopts laws on IP and e-transaction', *Thai Press Reports*, 23 November 2005
- <sup>34</sup> For a draft version of the law, which apparently has been adopted with only minor amendments, see the website of the National Office of Intellectual Property at [http://www.noip.gov.vn/noip/cms\\_en.nsf](http://www.noip.gov.vn/noip/cms_en.nsf) (accessed on 23 January 2006)
- <sup>35</sup> Kong Chhung, 'Trademarks and Copyright Protection in Cambodia', *Asia Law – IP Review*, January 2005.
- <sup>36</sup> See WIPO Document A/41/17, General Report of the Assemblies of the Member States of WIPO, October 5, 2005; 'Myanmar to enact intellectual property protection law', *People's Daily Online*, 1 September 2005
- <sup>37</sup> Khine Khine U, 'Protecting Intellectual Property in Myanmar', *Asia Law – IP Review*, July/August 2003
- <sup>38</sup> The initiative of Indonesian publisher PT Tatanusa to publish all decisions of the most important Commercial Court in Jakarta and all decisions of the Supreme Court in intellectual property matters has already been mentioned. In Thailand, summaries of some decisions of the Central Intellectual Property and International Trade Court and of Supreme Court decisions are available via a specialised electronic journal at [http://www.geocities.com/cipit\\_ejournal](http://www.geocities.com/cipit_ejournal), accessed on 28 January 2006. In the Philippines, intellectual property cases can be searched via a link on the website of the IP Office of the Philippines, see <http://www.ipophil.gov.ph/ipcaserearch/ipcasehome.htm>, accessed on 11 April 2006.
- <sup>39</sup> See Government Regulation No. 2 of 2005 concerning intellectual property consultants, available from the website of the Directorate General Of Intellectual Property Rights, <http://www.dgip.go.id> (accessed on 19 August 2005).
- <sup>40</sup> There is a separate registration system for agents handling plant variety cases, which are under the responsibility of the Ministry of Agriculture.
- <sup>41</sup> International Intellectual Property Alliance, *2005 Special 301 Report: Malaysia*, at <http://www.iipa.com/rbc/2005/2005SPEC301MALAYSIAREV.pdf>, accessed on 27 August 2005.
- <sup>42</sup> <http://www.iipa.com/rbc/2005/2005SPEC301INDONESIA.pdf>, accessed on 19 August 2005.
- <sup>43</sup> C. Antons, 'Intellectual Property Chapters in Australia's Free Trade Agreements With Countries in the Asia-Pacific Region', paper presented at the Conference 'Recent Developments in and Enforcement of Asian IP Law', Fordham University School of Law and IP Academy Singapore, New York, 30 March 2005
- <sup>44</sup> For details of the US-Singapore FTA see Loy Wee Loon, above note 8.
- <sup>45</sup> Weerawit Weeraworawit, 'The Harmonisation of Intellectual Property Rights in ASEAN', in: C. Antons, M. Blakeney and C. Heath (eds.), *Intellectual Property Harmonisation Within ASEAN and APEC* (above note 13), p. 208. See also Articles 1.4. and 1.5. of the ASEAN Framework Agreement.

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<sup>46</sup> *Ibid.*, p. 211

<sup>47</sup> For a summary of these reasons and counterarguments, see W. Weeraworawit, (above note 45), pp. 213-215

<sup>48</sup> See the ASEAN Intellectual Property Right Action Plan 2004-2010 on the website of the ASEAN Secretariat at <http://www.aseansec.org/7980.htm>, accessed on 12 April 2006.