

Guidebook on Regional Intellectual Property Management for SMEs in ASEAN



Funded by the European Union



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CHAPTER

01

Intellectual Property

THE UNEXPECTED BUSINESS TOOL
FOR SMES

WHAT IS

Intellectual Property (IP) is the set of creations resulting from human ingenuity applied to science, art or design.

INTELLECTUAL

It is an intangible asset protected in the form of rights granted by an authority over the innovative aspects of products and services. These Rights provide exclusivity on a particular aspect of the product or service, within a specific territory and for a limited time.

This asset is subject to certain conditions, such as actual use, payment of fees, clarity in the description (to be easily reproduced later by others) and limited to a type of activity (usually commercial).

PROPERTY?

It is about encouraging trade and innovation, not promoting greed.

Therefore, discoveries, parts of the human body, business models, popular or common terms in the sector or that faithfully describe the quality or origin of the product, easily accessible information or ideas, in general, are excluded.

IP TRANSLATOR

LEGAL TO BUSINESS

What they say...

What they mean...

A RIGHTS OVER THE INNOVATIVE ASPECTS OF PRODUCTS & SERVICES

Mere ideas are not protected, and you must know the corresponding regulation

Because the laws say so, it must be a competent institution examining and determining if it deserves such protection. This means knowing and observing the rules applicable to each IP Right (IPRs), which is frequently changed (that's why you must keep up).

B LEGAL AND BUSINESS TOOL

IP Rights provide exclusiveness and are exploitable

It is a legal mechanism (that is why it can be enforced before the courts) that provides exclusivity so that the holder can benefit from them, including -of course- exploiting them (by yourself or by others) and earning money and prestige, among other things.

C REGISTRATION NATURE (FIRST-TO-FILE)

You must register and do it fast

Except for copyright, IPRs must be registered, and you have to do it first. The first-to-use principle is only still in force in Myanmar. This makes it easy for everyone to know who innovated and what they need to be careful about, not to infringe and to see if their new creations are effectively new

D TERRITORIAL

There is no global protection. You must register where you aim to operate

It means in practice having to register in all countries where you have a commercial interest in the short and medium term. And this must be done in accordance with local IP laws, as each country has its own.

E LIMITED IN TIME

Then it becomes part of the public domain

20 or 70 years may seem like a lot, but after this time society can enjoy these creations freely (use them, modify them, market them) and create new things inspired by them. Think of future generations...

F LIMITED SCOPE OF PROTECTION

Each IPR protects one aspect

They are also combinable. In fact, successful marketing usually involves multiple, simultaneous IPR protection for one product or service. In other words, no product or service is fully protected by a single IPR.



IP EVERYWHERE!

THE IP-GLASSES EVERYONE WAS ASKING FOR

2

Intellectual Property is more present in your day-to-day than you can imagine, although neon lights do not always announce it.

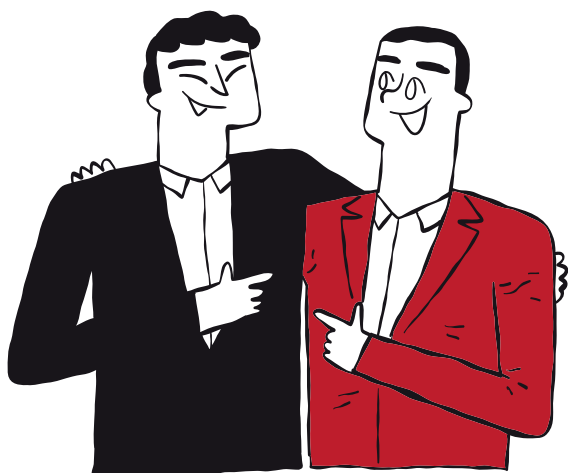
Besides the products and services that would not have become as relevant as they are -and that we use daily- there are many occasions in which we come face to face with one or several IPRs -either your own or someone else's-. And you may be making choices about them without noticing that can seriously impact your business's future.

a SOCIAL MEDIA PLATFORMS

By using or creating your social media account, you agree to certain terms and conditions. They typically include the platform's ability to use and exploit the content of your posts (you grant a non-exclusive license).

In addition, all of them have intellectual property policies that prohibit uploading content that includes IPRs of others without the owner's permission. Most of them have automatic detection mechanisms (e.g. YouTube ID), reporting and removal of infringing content, as well as harsh penalties for repeat offenders (e.g. shadow banning, demonetisation, blocking or irreversible account delete).

On the other hand, they may also provide IP-protected content -such as copyrighted songs- for you to use, but subject to certain conditions. It is on these platforms (e.g. Twitter or TikTok) where widespread good-faith-but-equally-illegal misuse of copyright-protected works takes place by using GIFs consisting of movie or series clips or copyrighted songs as background music.



b FINDING A NEW PARTNER

Promising aspiring distributors -or partners- who kindly request more and more documentation to close the deal until they suddenly disappear and only reappear with a product suspiciously similar to yours is a commonplace scenario. When entering into negotiations with potential partners, exchanging information involves a risky exposure that must be minimised with confidentiality contracts and prior registration of your trademarks, patents, designs, etc. A frustrated

meeting can end up with an unauthorised disclosure that forces you to speed up your registration plans (at best). Once inside, collaborators will have access to a lot of information, including know-how. Preventing leaks is essential, but ensuring ownership of what you created together is no less critical. Depending also on the type of collaboration and if it is not clearly explained what can and cannot be done, there can be an abusive or dangerous use of IPRs (e.g. regarding background, side ground and results).



c

SOFTWARE PROGRAMS

Microsoft Word, PowerPoint or Excel, Photoshop, Zoom, G-Suite or Dropbox are so popularly used due to their high-quality features, among other things.

Use is subject to a variety of subscription plans (licenses), that involve accepting their terms of use of the copyrights (software), trademarks and designs included. Not all of them are subject to the payment of a subscription fee (monthly or single). But among those that do, they usually set more burdensome conditions for professionals. They typically come with a greater number of devices or people who can use

them, more storage capacity or time of use, VIP features, no need to give credit to the author, use for commercial purposes, etc.

Some include technological protection measures that prevent downloading or using them unless you have a user account, password or license series number. Others allow its use but warn of the obligation to respect the type of use that is made of them according to the type of license acquired (e.g. personal use only).

d

FUNDRAISING

Typically, investors demand positive due diligence to give the green light. Thanks to it, they can discover your strengths (and raise the bet) and your weaknesses (discarding the investment).

Moreover, in the course of fund-raising competitions, you will disclose your potentially registered designs, as well as your trademarks and know-how, which must be protected in advance. It is pretty -understandably- common that the desire to make a good

impression throws you off or makes you take high risks.

Therefore, it is better to do a serious IP audit and proceed to register what is necessary. Paradoxically, many attend fund-raising competitions hoping to get the money needed to register. On the other hand, funding programs may include clauses setting the assignment of IPR in favour of the donors (i.e. agencies) or the obligation to register the results as IPRs.



e

TRADE FAIRS

The official exhibitions are the perfect place to test the soundness of your intellectual property strategy. Many attend them with the idea of finding new, easy-to-copy ideas, so you must have everything well protected before participating. Others show the result of that "inspiration" in them, so it is an excellent opportunity to identify offenders.

Thus, be prepared to get all the possible evidence discreetly. Organisers (especially the big fairs) often have intellectual property policies. It is good to familiarise yourself with them and visit the IP management centre point (if there is any). You will have the chance to get extra information and introduce yourself, making cooperation more fluid.

IP BENEFITS

A SURPRISING MELTING POT OF ADVANTAGES

3

Saying that intellectual property only allows you to prevent others from using your creations is like saying that buying things is the only way you can use money.

01

Protect your competitive advantage

Your exclusive right blocks others who must try to surpass you in creativity or circumvent your rights smartly.

05

New business models

The magic of IPRs is that they can be commercialised by several business actors simultaneously, in different locations, through a variety of business models like licensing, franchising or cross-licensing.

09

Increase control when you outsource

Outsourcing software development is very common and profitable in ASEAN countries. Thanks to IP, you will control that the information they access or the code or designs they develop (protected by copyright and designs) remain yours and you will reduce the risk of misappropriation, copying or illegal refilling.

02

Differentiation from your competitors

An innovative spirit or a consistent IP strategy can help you secure a market position and retain your customers. Plus, a good branding strategy can give you the visibility you need to get their attention.

06

Make money

Besides exploiting protected products and services, you can make your intellectual property profitable by selling all or part of your Rights. In countries where collecting societies exist (e.g. Thailand and Viet Nam), you will automatically receive royalties for your songs (if they are successful, of course).

10

Recoup the costs incurred to create the intangibles

In addition, these revenues will help you amortise what you have invested.

03

Attracting investors and talent

If business angels, venture capitalists and employees see that your company is serious about IP -because you identify, protect and fight for it-, your prestige will increase and many will be willing to join you.

07

Exposure control

You can sell directly to the end customer under your trademark -assuming benefits and risk-, or sell white label products for others to put theirs.

04

New business opportunities

Talent also attracts other companies who will want to create joint ventures, partnerships or R&D collaborations based on your existing IPRs or for the creation of new ones.

08

Gateway to new markets

With local partners that can help you in reaching new clients. In this regard, IPR-based business models have been shown to be an effective internationalization tool.



IP RIGHTS LIST

EVERYTHING YOU MUST CONSIDER AND WHAT ARE THEY FOR

4



01 INDUSTRIAL DESIGNS

Protect the new aesthetic elements of a product, like a shape or a pattern.



02 TRADE SECRETS

Protects information that has commercial value by being secret, like recipes, algorithms or lists of clients. It also applies to the company's know-how.



03 TRADEMARKS

Are signs used to identify and distinguish a company's product or services from those of its competitors, like the company's name or logo, slogan or packaging.



04 TOPOGRAPHIES OF SEMICONDUCTORS INTEGRATED CIRCUITS

Protect the layout design (mask layout) of transistors, chips and other circuitry elements.



05 PATENTS

Protect new and non-obvious inventions, be it new products or processes, like fresh packaging technology, 3D scan medical device or sweetening composition.



06 COPYRIGHTS

Protect creative works of expression, such as literary, software, photographic, musical, artistic and architectural works. They comprise moral and economic rights.



08 UTILITY MODELS

Protect improvements of already existing inventions (only products), like the cardboard folding packaging of Wall's Calippo (Thailand).



09 TRADITIONAL KNOWLEDGE

Protect the cultural identity and heritage of a traditional or indigenous community, like traditionally Timorese dress or plao-noi plant to treat ulcer.



10 PLANT VARIETIES

Protect the plants and breeds (flowers and fruits) with unique, stable, uniform features with an appropriate name, like mungbean (Vigna radiata L.).



07 GEOGRAPHICAL INDICATIONS

Protects products with unique qualities based on their origins, like Hom Mali Rice or Kampot pepper.

When the graphical aspect simultaneously qualifies for protection by multiple IPRs, an IPR overlapping may occur

A new packaging may be protected by industrial designs, but also by copyright (applied art) or trademarks (where shape trademarks are accepted, like in Singapore or Thailand). The first has the most limited duration but allows it to be marketed by several brands. The second has a much longer protection term, but the variants are few (although in Viet Nam, it is how the container should be protected), whereas the third has the longest duration (it can last for centuries if the fees are still paid), but you must consistently use it as such to identify your company and with no -or very little and irrelevant- modification.

In the case of Malaysia, if you protect your creation as an industrial design, forget about copyright protection (you lose it). So choose wisely the strategy that suits you best.

In the case of trademarks, the artistic part can also be -and often is- protected by copyright. That happens with illustrations or fancy fonts (e.g. the Coca Cola). Here we have a peaceful coexistence.

CHAPTER

02

Here is the plan

FOUR STRATEGIC STEPS THAT WILL TAKE YOU TO THE NEXT LEVEL

Things aren't what they used to be, are they? Everything is going faster thanks, among other things, to new technologies. They have brought many good things, facilitating international mobility and the access and development of new products and business models. But it is no less accurate that they have changed to a new scenario, in which competition is increasingly numerous and fierce, product life cycles are shorter (due to planned obsolescence, consumerism and fads), and growing consumers' and authorities' demands.

In this context, differentiating your products and services from others' and properly protecting them is key and easy. Just follow these four steps: inventory, value, protect and register. These will let you heal or upgrade your business and prepare you for IP diligence in raising capital (e.g. loan from a bank), license agreements, acquisitions, and financial reporting (e.g. taxation).

STEP ONE
INVENTORY

01

02

STEP TWO
VALORISE

STEP THREE
PROTECT

03

04

STEP FOUR
REGISTER

STEP ONE: INVENTORY

It's about exhaustively listing what you really have and its status. It is the so-called IP Audit. It will allow you to:

a IDENTIFY AND SPECIFY IPRS

Take a look around. Analyse and distinguish each and every intangible. Be methodical and systematic. And include everything: applied for and registered trademarks in your country and abroad, confidentiality agreements (NDA: Non-disclosure Agreement) subscribed, web domains, programming codes, operations manuals, plans and specifications (with copyright), image rights, licenses, designs, etc.

Do not forget also your know-how. Protocolizing the inner knowledge that makes you different from your competitors is a winning move. Documenting it will allow you to review its efficiency, transmit it more efficiently and even increase it with the contributions of other people who own it (e.g. employees). In short, get to know you better and grow.

c DEFINE RIGHTS, OBLIGATIONS & BURDENS

You must measure what their protection implies in terms of resources (how much time, money and effort it will cost you to protect them), both for the initial moment and to maintain them. You can then decide what to do (register, transfer, stop using, etc.). For example, starting business operations for a type of product or service for which you are not yet prepared may force you to exclude them from your trademark application because you

would be unable to comply with the use obligation. Or you may choose to register and license because of this obligation. It may also be the case that assets are no longer available (e.g. they have been cancelled due to lack of use) or are not solid, so they involve a risk of infringement and that the distributor claims responsibility for you, for example. Consequently, you should stop using them or terminate the contract.

d ANTICIPATE

The most visionary ones can take this opportunity to visualize the IPRS that might be necessary for other countries so that they can harmonize their naming and the other components of their brand image within what the different local regulations limit. In this regard, it is vital to perform previous searches in all territories of interest to check availability. Thanks to specialized databases you will be able to know if there are other previously applied for or registered IPRSs, what are they registered or applied for, if your design needs some modifications to be found new, or if they have been rejected and why.



b
DETERMINE THEIR STATUS
You must see if:

- they are already correctly identified;
- **you applied for registered protection;**
- additional protective measures have been adopted;
- **the products containing them have been disclosed;**
- they have been granted;
- **they are strong;**
- they are aware of payments;
- **or they have expired.**

You need to look differently at IPRs that require public registration (for example, trademarks and patents) than those that exist without registration (for example, scientific creations under copyright or trade secret).

T	I	P
Ideally, during the inventory you should check:		
Existence of licences As a licensee or licensor.		
Dependence on previous rights Such as coexistence agreements.		
Liens and garments on IPRS If they are used as collateral, for example.		
Obligation of confidentiality and exclusivity Both with respect to others, as well as for employees and external suppliers.		
Ownership and use of IPRS by collaborators The acquisition of know-how through service contracts, outsourcing, or collaboration should specify ownership and use of the background, foreground, and side ground.		
Ownership of labour creations and inventions Both in commissioned works and service or stable labour relationship.		
Ongoing court proceedings Such as out-of-court claims or pending trials and embargoes.		

STEP TWO: VALORISE

It consists of knowing the total economic value that your IPRs bring, taking into account the profits and the costs of protecting them. Clearly, the timing and information available will determine the best calculation method for you.

a QUALITATIVE METHODS

Qualitative methods focus on aspects such as the strength of your IPR (if granted, degree of novelty, years of validity, territories covered) or the competitive advantage it provides (e.g. degree of competition, substitutable existence, the average level of infringements in the sector, market size, etc.).

They are so connected to market analysis that you can take advantage of analysis formulas such as SWOT, PESTL or Competitive Forces model, which are the most popular ones.



- **Strengths:** e.g. exclusive products you only know how to produce them.
- **Weaknesses:** e.g. budgetary constraints, excessive dependence on a supplier, inability to innovate.
- **Opportunities:** e.g. business models or emerging trends related to your type of products or services.
- **Threats:** e.g. reverse engineering.

SWOT

PESTL

- Political factors
- Economic factors
- Socio-cultural factors
- Technological factors
- Legal factors

- Intensity of industry rivalry
- Threat of potential entrants
- Bargain power of suppliers
- Bargain power of buyers
- Threat of substitute goods and services

CFM

b

QUANTITATIVE METHODS

The quantitative methods are set in pure numerical data. The best known are:

COST-BASED

You take into account direct and opportunity costs related to the development of an IPR (which are not easily individualised), as well as the time factor (e.g. In the long run, trademarks increase their value, while designs or software tend to decrease as they go out of fashion or become obsolete). This method is the most recommended for the early stages of IPRs development or when there is no market revenue data available.

INCOME-BASED

The most used and easy to handle of all. Recommended for low-risk scenarios and realistic entrepreneurs. It is based on the income-generating capacity of the IPR (estimated according to the intrinsic value of the IPR). But it must be possible to measure itself separately from the contribution of other assets. To do this, you must take into account the actual time in which such income will be received under the conditions provided (depreciation due to obsolescence subtracts effective time), the costs actually involved in the IPR (which may change due to material costs, labour shortages or necessary investment due to change in regulations) and the risks associated with success (e.g. increased competition and therefore decreased the price you can put).

MARKET-BASED

It takes into account similar market operations (even if by approximation). Really new IPRs will have it harder to use this method for lack of references (people do not usually publish contract details). The expected profit, market acceptance or cash flow (per cash or royalty entry) are good indicators.

For more information on the valorisation of your IPR in ASEAN countries, be sure to consult our publication on this subject.



T	I	P
<i>Intellectual property can open new markets, but you must know them before taking the step. Your business strategy has to go hand in hand with your IP strategy. Planning them together from the beginning will help you make better-informed decisions, such as the feasibility of signing a distribution agreement or a non-exclusive licence in another country depending on the availability of the trademark at hand or the number of competitors with less innovative products but better established in the local market.</i>		

STEP THREE: PROTECT

Is there complimentary protection to IP rights?

The old saying perfectly sums up the collision between the merely formal and the practical. If you want to be right, then go just register your IPRs, so everyone knows you are the owner. Don't get me wrong: this is a must. But at an operational level, which is what matters at the end of the day, you must also be practically covered. Or, in other words, happily married. Following IPR protection, should you just lay back and relax? IPR protection is of course a good start and a necessary one, but often time it is not alone sufficient to make sure you are appropriately protected. There are additional mechanisms you can benefit from that would provide you with true shield-and-sword protection for your creations.



a COPYRIGHT

When it comes to your artistic, scientific or literary creations -or even software- you can simply enjoy the [Berne Convention for the Protection of Literary and Artistic Works](#). It grants automatic protection upon creation in all its country members, which means almost everywhere. This international treaty includes more than 170 countries around the world and all ASEAN countries except Myanmar, where works created abroad must be registered locally to be protected.

In this regard, proof of authorship is the key. Registration is the best way -and always recommended-, as it provides authorship presumption. But besides that, you could send a copy of your work to yourself via email or physical post, publish it on a social network or make a public statement with a notary. You name it. Anyway, you must include a recognisable sign (e.g. a logo, your name or pseudonym, etc.) and a

date of reference.

The second mechanisms would be the Technological Protection Measures -TPM and the Digital Right Management system -DRM. In an increasingly digital world, they are becoming more and more important and the best friend of suspicious entrepreneurs. In short, what they do is limit the access to your videos, songs, illustrations, source code, algorithm, list of clients... any digital files -either online or embodied in physical products, like CDs or Blue Ray-, or prevent users from copying or sharing them. Consequently, they are a good time and money saver, as they would prevent others from taking what's yours without your consent, and you from being forced to start legal actions to stop them.

Code encryption, low-quality image sharing, password access, background opacity, watermarks, geo-blocking, or the use of tokens are some examples.

b INDUSTRIAL DESIGNS

TPMs and DRM are also very useful when it comes to designs.

Of course, NDAs are also another key tool, particularly at the development stages (e.g. prototype design). They are good for internal uses (among your employees) or with providers (e.g. manufacturers) and potential new partners. These NDAs could be part of a more comprehensive secrecy strategy that could include limiting the number of people having access to the sketches or locking them in a safe. The adoption of any similar protection measure will allow you to benefit from Trade Secrets

-as far as the information/document provides has a business value that provides a business advantage for as long as it remains secret-.

And what would happen if the information is disclosed by any means, including you yourself presenting your product at a trade fair, or selling some units? Grace period got you covered. This gives you a 6 (e.g. Indonesia) or 12 (e.g. Cambodia, Singapore) month period to file your industrial design application without hindering its novelty.



Watch out!

Grace period is more like a safety net than the usual way to go. Preparing the documentation to know the feasibility of registration takes a long time and it is convenient to do it before use or selling to be sure that registered designs of others are not unintentionally infringed, and that the application may be submitted on time. In addition, each country has its own conditions. For example, in Indonesia, it only covers official exhibitions and/or is used for education, research or development purposes.

C

DOMAIN NAMES

Speaking of the brand and its online presence, there is nothing easier, cheaper and faster than registering your company or product name as a domain name. In most ASEAN countries, registration of country top-level domains (e.g. .com.ph, .asia, .la) has no additional requirements than availability (e.g. Lao PDR, Philippines), or only requires a serious business link, such as a local residence (e.g. Malaysia, Myanmar and Singapore) or local representative (e.g. Brunei Darussalam). Strictly speaking, domain names are not IPRs, but they are connected to them. For example, Cambodia requires a copy of the trademark certificate (or license) and Thailand and Indonesia go a step further by requesting that the trademark (and/or business license, in the case of Thailand) also correspond exactly to the domain name.

It is advisable to avoid registering a domain name that contains,

consists of or is confusingly similar to a previously registered trademark of another company. They could claim the cancellation or transfer if they believe -and manage to prove- that there was no legitimate interest on your part (i.e. bad faith registration). Of course, this also applies in reverse and it may be you who benefit from this possibility.

However, these conflicts are not resolved automatically. You have to raise the issue before the competent authority. Unfortunately, not all ASEAN countries have dispute resolution services, either international (before WIPO) or local (only Lao PDR, Malaysia, Philippines, Singapore and Viet Nam have the m so far). So, you'd better hurry up and secure yours against trolls.

CLUES TO A BAD-FAITH REGISTRATION

- A** There is no webpage -not even under construction
- B** Redirects you to another website
- C** The site contains products -fake or not- identical to your (or even inappropriate content)
- D** The domain name contains a well-known trademark or names protected by copyright (e.g. Batman)
- E** The domain name consists of a misspelling of a competitors' or a well-known trademark (typosquatting)
- F** The domain name is for sale and the registrant demands an inordinate amount of money



STEP FOUR: REGISTER

In contrast to other regions, such as the Benelux countries, the European Union, Africa and the Andean Community of Nations, there is no possibility in ASEAN of registering a trademark valid in all its members through a single application.

Neither is there for designs and, although protection is automatic for copyright in almost all of them, registration is not. That is why you have to register country by

country (local register). Fortunately, the Madrid system comes to the aid of those who want to set foot in various countries of the region simultaneously (except in Myanmar, for now). The Hague system, which is for Industrial Designs, can also be very useful, although it is less widespread (only Brunei Darussalam, Cambodia, Singapore and Viet Nam are party). But this type of international registration is a process that, like some sagas, has more than one part and not all are equally good.



A LOCALLY

Local registration is the most secure, durable and reliable option to protect your IPRs. In fact, in the case of trademarks and industrial designs is the only way (general rule). Each country has its own rules and, although the level of homogenization is increasing, there are local differences that you must know.

In order to access the register, it is inevitable to deal with some red tape and submit certain documents for the sake of processing systematization.

Generally, you will need to provide:



APPLICATION
FORM



IDENTIFYING PERSONAL
DATA



PROOF OF PAYMENT
OF FEES



POWER OF
ATTORNEY
*(notarized in some
cases, as in
Cambodia)*



REPRESENTATION OF
THE REQUESTED IP
RIGHT
*(e.g. drawing,
recording,
name,...)*



INDICATION OF THE
GOODS OR SERVICES TO
WHICH IT APPLIES
*(in trademarks and
industrial designs)*

Translations, priority claims or novelty statements are also common. It must be also added those that the specific case demands (e.g. Declaration of Actual Use-or DAAU- for trademarks in Philippines). Check the websites of the different IP Offices to find out exactly what you need.

The language of registration in the ASEAN countries is one of the most positive notes. English is accepted along with local

languages in Singapore, Malaysia, Philippines, Brunei Darussalam, Lao PDR, Cambodia and Myanmar, although sometimes they may request translation of documentation into the local language (e.g. Lao PDR provides a 60 days period after application to submit translated documents). This implies a clear reduction and simplification of procedures.

Watch Outs

I'll do it... TOMORROW

A recurring strategy among cash-strapped entrepreneurs is to enter new markets without locally protecting IPRs. They take it as a trial run and find it preferable to reduce costs to a minimum, leaving the investment in IP to a later stage when it is believed that they are more prepared or that the market is more mature.

This low-profile approach favours trolls and scammers, who take advantage of unsuspecting entrepreneurs and register their brands and then sell them for a lot of money.



Ownership

Too often, it is assumed that what is handled or produced in the company is safely owned. Before registering, make sure you are entitled to it, as the laws of each country may, by default, grant the Rights to different actors in identical circumstances.



As a rule of thumb, creators are often the legitimate owners of designs that are protected by copyright or industrial designs. This is the case in commissioned works, unless otherwise expressly agreed. So be very careful to include such ownership transfer clauses in contracts with suppliers (e.g. graphic designers, engineering software, etc.).

In the case of labour relations, if the employee has created it as part of his ordinary work or using the means of the company, both authorship and exploitation usually belong to the employer (or, at best, he retains authorship). Only if he did it outside the framework of work, the employee wins. To avoid unpleasant surprises, it is best to review and expressly assign ownership of the Rights.

01 COSTS

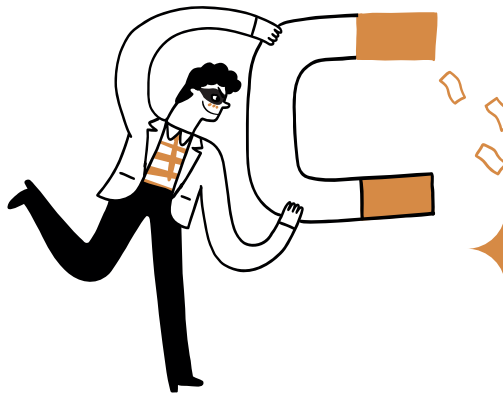
Registration of IPRs is not just about paying official registration fees. Other costs, such as translations and documentation legalisation, or IP's attorney fees, should also be considered. The latter may include additional charges such as prior IPRs searches, reports, negotiation of coexistence agreements and other actions before the Offices (e.g. responding to opposition actions). The final price will also depend on the number of designated classes (trademarks), designs (industrial designs), or protected works (copyright).

WATCH-OUT!

In the Philippines, foreign companies are presumed to be big companies. You will have to submit proof of being an SME (e.g. affidavit) to make them change their mind and enjoy their discounts.

Considering only the official registration fees, the estimation for trademarks ranges between €30 (Thailand and Philippines) and €220 (e.g. Malaysia or Singapore).

For industrial designs, you should budget no less than €16 (Thailand) to €200 (Brunei Darussalam); whereas for copyright, pricing varies a lot depending on the type of work: from 4€ (e.g. Cambodia or Lao PDR) to 425€ (e.g. Philippines).



DON'T SCAM ME NOW

You might be contacted by fake representatives of IP Offices, claiming you committed an infringement or that there are some irregularities that must be clarified regarding your applied for or registered IPR (e.g. in Singapore). Scams might be very sophisticated, but personal or financial data request is a clear sign. Training yourself on IP and being assisted by an IP expert will disarm scammers.



OFFICIAL FEES

TRADEMARKS*

INDUSTRIAL DESIGNS**

COPYRIGHT

BRUNEI DARUSSALAM	BND 150	BND 300	NO REGISTRATION SYSTEM AVAILABLE
CAMBODIA	KHR 420,000	KHR 80,000	KHR 20,000 - 60,000
INDONESIA	IDR 2,000,000	IDR 810,000	IDR 500,000
LAO PDR	LAK 1,120,000	LAK 1,200,000	LAK 35,000
MALAYSIA	MYR 1,020	MYR 680	MYR 155
MYANMAR	MMK 8,000**	NO OFFICIAL FEES FOR THE MOMENT	NO REGISTRATION SYSTEM AVAILABLE
PHILIPPINES	PHP 3,792	PHP 4,300**	PHP 22,300
SINGAPORE	S\$240	S\$250	NO REGISTRATION SYSTEM AVAILABLE
THAILAND	THB 1,000	THB 600	NO OFFICIAL FEE
VIET NAM	VND 1,360,000	VND 360,000	VND 100,000 - 600,000

*For one class or design. Priority, agent or translation fees are not included.

** No official fees for the moment. These are just estimations based on prior applications

*** For Small companies only



02 LENGTH OF PROCEEDINGS

Each Office has different resources, procedures and requirements that speed or hinder the registration process. The complexity of the case and the responsiveness of the applicant himself may cause even bigger granting delays.

Rule-breaker:
Fast-track trademarks

Malaysia provides for an expedited examination mechanism for trademarks, provided there is a serious and duly justified reason. Specific scenarios are already foreseen, like current or potential risk of infringement, or if it is a condition for obtaining monetary benefits from recognised institutions. This only applies to traditional trademarks (i.e. words or images), excluding colour, sound, scent, hologram, positioning, sequence of motion, collective and certification trademarks.

Anyway, the average registration time ranges from 2 (e.g. Myanmar) to 36 months (e.g. Indonesia) for trademarks, which is very similar to industrial designs, that go from 6 months (e.g. Philippines) to 36 months (e.g. Indonesia).

The registration of works is the fastest procedure, given the simplicity of the procedure. Just in a few days (e.g. 14 in Cambodia or Viet Nam) or a few months (e.g. 5 months in Indonesia with manual registration), you can get the granting certificate.

AVERAGE LENGTH OF PROCEEDINGS

TRADEMARKS

INDUSTRIAL DESIGNS

BRUNEI DARUSSALAM	15-18 MONTHS	8-12 WEEKS
CAMBODIA	9-12 MONTHS	6-8 MONTHS
INDONESIA	24-36 MONTHS	24-36 MONTHS
LAO PDR	12-15 MONTHS	6-12 MONTHS
MALAYSIA	12-24 MONTHS	8 MONTHS
MYANMAR	2-4 MONTHS	N/A
PHILIPPINES	6-12 MONTHS	6 MONTHS
SINGAPORE	9- 12 MONTHS	4 MONTHS
THAILAND	18-24 MONTHS	2 YEARS
VIET NAM	15-18 MONTHS	15 MONTHS

03 TRADEMARKS

WHERE TO REGISTER

You can file your application at the premises of the respective offices (see section 7) or online (in all ASEAN countries except Lao PDR and Myanmar), either on your own or through a qualified local representative (it's mandatory for foreign companies that do not have a local domicile or business operations accredited in the country). In any case, it is optimal to have a qualified Intellectual Property agent or lawyer. He/she will advise you in the best way and his/her experience and knowledge will allow him/her to deal with the paperwork and bureaucracy much easier. Remember that errors in processing delay granting.

Rule-breaker:

Singapore

The IP Office of Singapore adopted a 100% online-based model, with e-appointments and a fully digital registration system (IP2SG) and a mobile app (IPOS Go Mobile App).

All ASEAN countries adopted the first-to-file system. However, since trademarks aim to identify the companies' goods and services avoiding consumer confusion and free-riding, brands that have gained remarkable notoriety may claim benefiting extra protection. Indeed, they do. The unregistered ones could oppose confusingly similar trademark applications.

This option opens up for many reckless entrepreneurs as an alternate way to registration that has nothing to do with the popular motto "no risk, no gain". Honestly, it's a poisoned apple. This notoriety must be proven if it is claimed (e.g. by advertising expenses, declarations or surveys, reach and amount of advertising, media coverage, geographical coverage, etc.), and may fall by the wayside.

On the other hand, in Myanmar, the old first-to-use principle remains. Some might be tempted to enter the country and try their luck before scaling up to an appropriate IP protection model. In practice, it involves using other legal mechanisms to prove having been the first and defend exclusivity, so it is advisable to register anyway. Moreover, this "oasis" will soon dry up if everything goes as planned. Its new rules provide a transitional regime that will be incorporated softly and definitively into the first-to-file system.

Thyda Thaung and Narin Bun had no doubt about the importance of differentiating yourself from others and how IPRs could help small companies on this

This family-owned business grew into an SME simply thanks to trademark protection. Now, Thaung equals to high-quality salt, and Cambodian -and abroad- consumers know them well due their distinctive logo.

Do you want to know did they do it? Read the [full story here](#).



WHAT CAN BE REGISTERED

Words, numbers, names, phrases, symbols, artworks, images or a combination of these elements can be registered.

There are also the new trademark types (non-traditional trademarks). Sound and 3-D (shape) are the most popular and widely accepted

(e.g., Cambodia, Brunei Darussalam, Indonesia, Singapore or Philippines). Smell, multimedia, motion (e.g. [Toshiba](#)) or holograms (e.g. [Google](#)) are the most cutting-edge ones (accepted in Singapore, Malaysia or Brunei Darussalam).

But there is a minor problem. Despite the regulations already in force, some countries still do not have the necessary tools to

register them (e.g. Lao PDR or Myanmar) and, in practice, it is not feasible at the moment.

Registering the name of the company as a word mark is the starting point. Extending protection to the logo or slogan are logical next steps, but you need to ask an IP expert to make sure that's exactly what you need and how to do it best.

DON'T LOSE YOURSELF IN TRANSLATION

Having a local language version of your trademark is highly recommended. You'd better do it in tandem with marketing professionals and translators familiar with the local culture. It will allow you to capture the spirit of your brand and transfer/adapt it to the target audience's taste. In addition, it will protect you against foreign equivalents, a type of bad-faith registration very common in countries such as Indonesia or the Philippines. This translation may consist of:

ALPHABETICAL TRANSLATION

Passing from one's own characters (for example, Romans) to local ones (e.g. Thai or Khmer).

LITERAL TRANSLATION

it consists of mere linguistic adaptation, which is only possible when the word or phrase has a concrete meaning. This type of translation is required in

any case (regardless you apply for it or not) by several Trademark Offices (e.g. Cambodia) in order to examine whether it is generic or descriptive, or if it is against public morality.

PHONETIC TRANSLATION

The translation is extended to how it is pronounced in the original language so that it sounds the same using the local language.

MEANING/ CONCEPTUAL

Extracts the idea that the company wants to convey and projects it in the local language (or even alters it to fit the local culture).





COLLECTIVE AND CERTIFICATION TRADEMARKS

Collective and certification marks are a good opportunity for companies that want to act that union is strength to scale local prestige internationally. These types of trademarks are particularly effective in reinforcing the premium quality, authenticity, craftsmanship, raw materials, safety, sanitary standard or the cultural links of a product.

That was the path chosen by Cordillera Heirloom Rice, Lake Sebu T'nalak or the Aklan Quality Seal (and soon *Bicol Pili*), all registered in the Philippines as collective marks.

The trademark owner decides who can or cannot use it (with the exception of certification marks, which in Singapore must allow the use of persons who legitimately use a very similar or identical name to faithfully reflect the geographical area of origin, for example). However, and as with any other kind of trademarks, the sign must be used for a previously designated type of products and services and be established the requirements to be met (certification checklist).

Small local farmers have a safe springboard in collective marks, while experienced entrepreneurs may consider registering their certification mark to flag the proven quality of textile (e.g. yarns and threads) or technological (e.g. *software certification program*) products under their name.

IPRs: the new silk route

Many entrepreneurs underrate the business value of traditionally-made local products.

Food and beverage-related products are easily linked to the quality seal that GIs provide. But clothing techniques are very much under the radar. It was the case of Nichada Suriyacharearn, now permanent secretary of Provincial Administrative Organization (PAO) of Lamphun, founder of the Institute of Hariphunchai Hand-woven Cloth in Muang district and main driver of today's GI-protected Lamphun's pha mai yok dok, a Thai-produced hand-woven silk brocade based on ancient techniques.

She was able to preserve local wisdom, update traditional knowledge, transmit local quality, improve community's life, build a profitable business model and put Lamphun on the map through GIs.

See the inspiring [full story here](#) and figure out how easily you could benefit from IP to upgrade your business.

PROTECTION DURATION

Trademarks have an initial duration term of 10 years (except in Cambodia, which is 5 years), from the date of application (e.g. Thailand, Malaysia, Cambodia, Viet Nam, Singapore or Indonesia) or the date of registration (e.g. Philippines). The most attractive part is that they can be renewed indefinitely for identical periods (5/10 years), provided they continue to pay the corresponding fees. When should it be renewed will also depend on how long it takes to be granted.

Not all countries allow extra time (usually 6 months) to renew the brand when it has already expired. Indonesia or Singapore do.

On the other hand, the obligation to use the trademark is indeed common in all ASEAN countries, although the allowed downtime can vary between 3 (e.g. Malaysia or Indonesia) to 5 (e.g. Lao PDR, Viet Nam or Singapore) years.

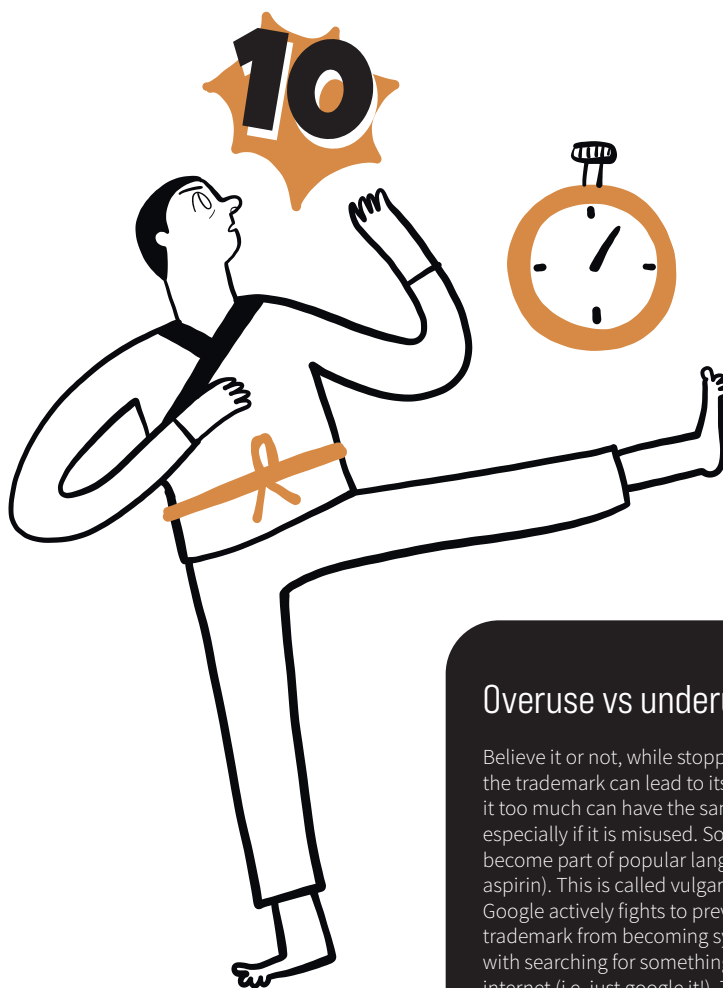
Similarly, there are countries that require proof of use for renewal (e.g. Cambodia) or even call for it periodically. This is the case in Myanmar. Here, one must submit proof of use (i.e. affidavit) within the 5th year after registration and pay a fee. If you do not use the trademark, another company may request its cancellation. The cancellation implies that its owner loses it, becoming available to anyone who wants it (even for new registration).

Rule-breaker:

Philippines

The Office itself can cancel the trademark if the proof of use is not submitted within 3 years of the filing date of the application, 5 years from the registration, plus the first and fifth years of each renewal.

Moreover, the obligation use extends to what is actually registered. Variations of the logo would require a new trademark registration (especially if it is significant). There are looser countries, such as Malaysia, that allow grayscale or black and white registration to protect any colour variant of the trademark.



Overuse vs underuse

Believe it or not, while stopping using the trademark can lead to its loss, using it too much can have the same result, especially if it is misused. Some brands become part of popular language (e.g. aspirin). This is called vulgarization. Google actively fights to prevent its trademark from becoming synonymous with searching for something on the internet (i.e. just google it!). To avoid this, you'd better not use the registered sign as a name, verb or adjective, but as a trademark, and add a generic name of the product or service before (e.g. Fruity candies Frutati®).

REQUIREMENTS

01. DISTINCTIVENESS

A trademark will not reach the registry if it is essentially descriptive (use of adjectives such as faster or cheap, geographical terms or laudatory expressions) misleading (with respect to its source of origin, characteristics or quality including prices), generic (a term commonly used in the sector) or contrary to public order or morality (swearwords or religiously offensive). That is why it is so important to know the meaning of the foreign trademark.

WATCH OUT!

Thailand is especially sensitive to descriptive or suggestive trademarks. Check (and modify) yours to avoid referring exclusively to product quality.

It cannot be identical to national flags or emblems or other prior IPRs either (e.g. a copyright-protected work, like a font or an illustration, for a logo).

Your trademark may contain items like the ones above, along with others. The distinctiveness is measured in relation to the overall impression (sign in connection to the type of products/services covered). That's why fanciful (which have no meaning at all) or arbitrary trademarks (out of context) are often the safest (e.g. Kodak or Pepsi).

Rule-breaker:

Acquired distinctiveness

Trademarks that are -at least partially-descriptive and that have built a name thanks to consistent use for years can also achieve registration recognition, even become well-known trademarks (e.g. American Airlines, Mastercard or The Pizza Company).

02. TYPES OF PRODUCTS AND SERVICES

As a general rule, registration is granted for a sign in respect of specific goods and services (principle of speciality). And these have to be designated in the application and then used effectively. There are pre-approved lists that group the most common types of products or services by categories (classes) that make the task much easier and save money (e.g. in Singapore, applications for classes whose specification are not fully adopted from the pre-approved database cost S\$100 extra). The **Nice classification** is common in practice in all ASEAN countries.

There are obviously many different types of products and services. Some have nothing to do with yours' and you won't pose an obstacle, but others are complementary, substitutes or have some other type of link that makes two trademarks incompatible. Therefore, if the mark you apply for is identical to one already registered, but one is for beer and one for juices, it will be rejected.

Rule-breaker:

Well-known trademarks

Most of the well-known trademarks belong to companies that managed to gain such popularity by working hard in a specific sector. In the IP language, this means that they had registered their trademark for a few classes. However, they are provided with extra protection outside them to prevent bad faith applicants from preying on their prestige by taking cover behind the speciality principle.

Blanding

Brands such as **Burberry** or Audi have already made a transition to a more versatile and adaptable to new technologies (any mobile device-friendly) model. They opted to simplify their logos down to a name with a custom font type. The weight falls on the word part, and the registration of the name

as denominative trademark is what allowed them to make these changes more frequently without weakening the IPR that supports it. In the case of logos with a strong graphic load (and which constitute the distinctive part of the sign), be careful lest end up undermining all the distinctiveness.

03. AVAILABILITY

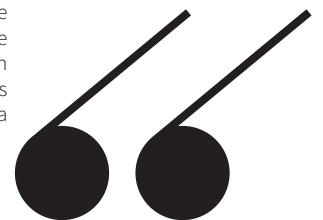
It does not have to be new, but a vacant sign (either because no one has registered it before or because the registration has been abandoned or cancelled). This requires a prior search in official databases, as well as checking the Official Gazettes of the Trademark Offices and the market (especially in Myanmar).

Ideally, it is an IP expert who does these previous searches, as they have the ability to evaluate if there are potential

conflicting trademarks and access to exhaustive databases and other automated tools that guarantee a better result. However, doing a search for yourself is a good start to ruling out red flags.

Except for Myanmar and Lao PDR, all ASEAN countries have their own search portals (see Chapter 7) and some can perform availability searches for you, subject to payment of a fee (e.g. Malaysia).

In addition, you have **ASEAN TMview**, the **EUIPO TMview** and the **WIPO's Global Trademark Database**, which allow filtered searches both nominal and image.



Well-known trademarks will have to be taken into account when you want to register yours, lest it matches any of them and leads to rejecting your application.

Well-known trademarks will have to be taken into account when you want to register yours, lest it matches any of them and leads to rejecting your application.



04 INDUSTRIAL DESIGNS

WHERE TO REGISTER

As with trademarks, registration can be done in person (see section 7) or online (e.g. Malaysia, Philippines or Singapore). Local citizens are fully entitled (proving to be the creator or authorized by him), but it is better to leave it in the hands of IP professionals who know local particularities. Foreign entrepreneurs without local domicile or demonstrable business operations will be forced to appoint a qualified local representative anyway.

WHAT CAN BE REGISTERED

Form or composition of lines, colours, contours, patterns, shape, texture, configuration of the whole or part of a product are covered. In other words, everything that confers a different aspect. This means that both 2-D and 3-D are protectable and protection may extend to non-physical products (e.g. Digital User's Interface -DUI).

These elements must not be hidden (but visible) or for articles that are integral parts of other articles nor feature-dependent upon the appearance of other articles (e.g. Malaysia or Singapore).

PROTECTION DURATION

Generally, protection is granted for the first 5 years, which may be renewed for identical periods up to 15 (Brunei Darussalam, Cambodia, Lao PDR, Philippines, Singapore and Viet Nam) or 25 (Malaysia) years in total, counted from the date of application. Myanmar, for its part, is in a transition process, at the end of which it could be registered as in Brunei Darussalam or Cambodia.

Rule-breaker:

Thailand and Indonesia

The protection is granted for a single non-renewable total period of 10 years, counted from the filing date.

Time freezer

Thanks to the [Paris Convention](#), trademarks and industrial designs applied for in one country can assert their priority (recognition of the same application date) within 6 months in any of the other member countries (all ASEAN countries).

This provides extra time to decide whether to enter another country or not, leaving out competitors who registered something similar in that span of time. But beware: this mechanism freezes time, but does not automatically make your IPRs compatible with the regulations of other countries, nor does it eliminate previously applied for or registered trademarks.



Performing a previous search in reliable databases knowing the relevant search criteria is crucial

[ASEAN DesignView](#) or [DesignView](#) are trust-worthy sources, but you should also check specialised publications and social networks (e.g. Pinterest, Behance, etc.).

Moreover, not all sources are as up-to-date as they should be, so going to an IP expert is, as always, the best option.

REQUIREMENTS

The analysis carried out in the Offices is indeed thorough, especially where a substantial examination is conducted (i.e. Indonesia, Lao PDR, Malaysia, Philippines, Thailand and Viet Nam). It is true that it may delay the granting a little, but in return you get stronger rights.

01. NEW

The level of novelty required is the highest of the three IPRs. It is requested that it is not similar (i.e. does not generate a similar impression) to anything that has been published anywhere in the world by any means before

the filing date. It exempts abusive disclosures (e.g. unsatisfied, vengeful ex-partner) or certain own uses (e.g. development, presentation at official exhibitions). In such cases, 6 (e.g. Indonesia and Philippines) or 12 (e.g. Cambodia) months are given to apply for registration without hindering the novelty.

After this time, the window is definitely closed around the world (the novelty is worldwide).

The novelty should lie on aesthetic characteristics. What only provides (or is claimed to provide) a technical function is ruled out. That's what patents or utility models are for. The shape of a car can bring a modern air. That's OK. Greater aerodyna-

mic efficiency is irrelevant.

It is not difficult to imagine products whose ornamentation is obscene or offensive (especially in three-dimensional products). Finding them registered, however, is difficult, because designs contrary to public morals, order or health are excluded.

Depending on the country, there may be additional requirements, such as an accurate description of the scope of exclusivity (e.g. Thailand), send a sample that embodies the industrial design (e.g. for 2-D only in Cambodia) or indicate exactly to which type of products it will be applied, according to the [Classification of Locarno](#) (e.g. Singapore).

Planning the season and registering with time has prize

Some Offices (e.g. Singapore) help to maintain the suspense and prevent others from starting copying ahead of time, allowing the publication of the design to be delayed up to 18 months from the application.

02. INDUSTRIAL APPLICABILITY

The product must be capable of being manufactured repeatedly and has at least one use in an industry. In some countries, protection is extended to handicraft products (e.g. Cambodia, Thailand or the Philippines).



05 COPYRIGHT

WHERE TO REGISTER

You can physically apply at the Offices that provide this registration option (see section 7). E-filing is available in Indonesia or Malaysia. Even if the procedure is theoretically the easiest of all and you can try to do it on your own, it's better to -at least- have the advice of an IP expert. As always, foreigners will have to designate one to represent them in any case.

Rule-breaker:

Brunei Darussalam and Singapore

None of them have a proper copyright registration system. In Brunei Darussalam, Copyright is under the purview of BruIPO, Attorney-General's Chambers (AGC). Singapore, on the other hand, provides copyright-related services that are only focused on raising awareness and enforcement.

WHAT CAN BE REGISTERED

Books, blog posts, scripts, short stories, song lyrics, songs, musical scores, melodies, plays, TV shows, dance, acrobatics and choreography, drawings, illustrations, images, fonts, sculptures, applied art, models, databases (meaning the selection of content) and software, mobile apps or videogames can benefit from copyright protection. In short, any written text, audio-visual or performance work.

May I borrow your work?

There are uses that do not require the authorization of the author. Making a criticism, comment or parody, or using it for educational purposes is allowed. It is what is known as fair use.

There may be additional conditions, such as that it is not for profit or that the analysed or criticized content displayed is limited to a reasonable portion of the work (not all or almost all of it).

If you hear that your song on a Viet Nam's radio show and nobody asked your permission, don't be surprised. The local regulation allows it as long as it does not harm you, and in return you will receive a statutory royalty. Also in Indonesia or Brunei Darussalam, collecting societies (e.g. BeAt Berhad or BruMusic Sdn Bhd) will help you manage this type of operation.

PROTECTION DURATION

Strictly speaking, moral rights (i.e. attribution of authorship, integrity and access to the work) are infinite. Economic rights (i.e. reproduction of the work, publication, communication to the public, public performance, and adaptation), however, have a general duration of 50 years. It may vary depending on the country, type of work and type of author. For example, In Singapore, published editions of literary, dramatic, musical or artistic works are protected for 25 years after publication, while broadcast and cable programs enjoy 50 years of protection (20 years in Indonesia or Myanmar).

In addition, the computation is made from the death of the author (general rule) or the publication (software, anonymous works or those belonging to producers or other legal persons). In any case, you must count from January 1 of the following year, adding up the years of protection.

Knowing the duration of the protection of an IPR will allow you to take advantage of what is already in the public domain to market it or create something new based on it without having to pay a single cent. But for this, you have to be sure when it was published and to whom their Rights belong (company or natural person).

COPYRIGHT PROTECTION DURATION

COUNTRY	NATURAL PERSON <i>Years after the author's death</i>	LEGAL PERSON <i>Years after publication or creation</i>
BRUNEI DARUSSALAM	50	50
CAMBODIA	50*	75**
INDONESIA	70	50
LAO PDR	50	50
MALAYSIA	50	50
MYANMAR	50	50
PHILIPPINES	50	50
SINGAPORE	70	70
THAILAND	50	50
VIET NAM	50	50

Also software & unpublished work

*75 years after publication in case of anonymous authors).

** Years after publication only

REQUIREMENTS

Apart from formalities, there are only two requirements for registration, which also apply to mere protection.

01. EXPRESSION IN PARTICULAR FORM

Mere ideas are not protected. It must be formulated (take body) by any means of expression (including mere voice) and in a concrete way (that is why principles, style, methods of operation or concepts are excluded). In addition, it is better to fix it in something durable, such as on a piece of paper, an audio file, a video recording or a photograph.

Copyright regulation is on fire

Many countries are updating their regulation to meet the digital trends and new content creators' needs. Keep an eye on Singapore's latest developments on Copyright [here](#) to see what's coming.



02. SUBJECT ORIGINALITY

The exact copy (obvious) or the mere use of a technology that automatically generates a work are the two great limits. Anything in between could qualify for copyright protection (as long as there is a personal creative effort). Consequently, there may be two very similar works in two parts of the world. If inspiration has reached both authors equally (and there is no evidence to the contrary), we have two winners

B INTERNATIONALLY

The internationalization of your business opens up as a promising hope and, at the same time, a bankrupt menace. The requirement of global novelty and how usual bad-faith registrations are in some ASEAN countries (e.g. Philippines, Thailand or Viet Nam) force you to move quickly, if you do not want to close the doors of international markets ahead of time. Getting an early registration on one or more of them is definitely a huge advantage.

Would not it be wonderful to enjoy a simple, centralised procedure for the protection of your IPRs in several countries through a single international registration with effects in all designated countries? It would be. And indeed, it is. And ASEAN companies can enjoy it, both for trademarks and for industrial designs. But to make sure it's the best option for your case and make the best use of it, do not hesitate to contact your trusted IP expert.



01 MADRID SYSTEM

WHAT IS IT

The **Madrid System** is a convenient, centralised and cost-effective solution for registering and managing trademarks in up to 127 countries worldwide.

You must have a trademark already applied for or registered in one of the member countries. This base mark is sent to WIPO, which

examines it and forwards it to the National Offices you have designated. They analyse it according to their regulations. If everything's OK, you're in. If you didn't consider local particularities or similarly confusing local trademark, you're out.

You can find all the details about this system on our [website](#). Our publications include detailed country guides in both English and local languages.

WHERE CAN I USE IT

All ASEAN countries are members of Madrid System except Myanmar. You can check the full list [here](#).

COSTS

In addition to the costs mentioned (see page 18), a basic fee (c.a. 653 CHF) and an individual fee per designated country must be taken into account here. And, as with local trademark registration, every extra class must be paid.

If you want to know how much it can cost, check out the [WIPO Madrid Fee Calculator](#).

PROCEEDINGS DURATION

Deadlines are variable, but you have a minimum of 12 to 18 months to get a favourable response, if all goes well. In Thailand, it is realistic to estimate between one and two years, while in Indonesia you will have to add a year extra.

PROS

01

Single channel

Just submit an application, in one language and one currency (Swiss francs).

02

Less paperwork

No translations or local representative per country required (unless Offices put any obstacle).

03

Fully digital

Allowing you to submit and track from anywhere and anytime.

04

Speed

With rare exceptions, before a year and a half you should have your registration granted.

05

Centralized changes

Classes that you will not be using at any time can also be cancelled (paying your fee).

06

Smooth renewal

The same renewal date is taken into account (10 years from the application)

WATCH-OUTS

01

Triple phase

You need to apply for a trademark before and move to the national phase after.

02

Language limitations

Non-Roman local alphabets (e.g. in Viet Nam or Thailand) are not covered.

03

Domino effect

Your mark of origin is the basis. Everything that happens to it (rejection, cancellation or abandonment) will be reflected in the others.

04

Limited partners

Despite having more than 125 members (and rising), there are many countries that are not yet members or that still have to adjust a couple of changes to get it going.

02 HAGUE AGREEMENT

WHAT IS IT

In short, the **Hague Agreement Concerning the International Registration of Industrial Designs** is an international system that allows industrial designs to be protected in 94 countries with minimal formalities.

You are not required to have an applied for or registered industrial design in any of the member countries, but you will have to follow the same multifaceted process (international and national) to achieve your goal.

On our website you will also find **publications**, such as these from **Viet Nam** or **Cambodia** about the Hague System with all the information you may need.



WHERE CAN I USE IT

To this day, only Brunei Darussalam, Cambodia, Singapore and Viet Nam are part of it. However, you can benefit from this mechanism even if your home country is not part of the club. If you are a national, have a domicile or usual residence or have effective industrial or commercial establishment in a contracting party, walk down the red carpet of the Hague system without fear, because they rolled it out for you.

COSTS

Besides the basic fee (397 CHF for one design), which increases with every extra design included (19CHF), you must pay a publication fee (17 CHF for each reproduction; 150 CHF for each page on which one or more reproductions are shown) and the individual fee for each designated country.

PROCEEDINGS DURATION

The estimated granting time is not as uniform as in the Madrid system. It can range between 18 months (e.g. Indonesia) or three years (e.g. Thailand or Viet Nam).



PROS

- 01 Single channel**

single application, in one language (English, French and Spanish accepted) in one currency (Swiss francs).
- 02 More designs**

Up to 100 designs are accepted per application, provided they belong to the same category of Locarno classification).
- 03 Easier management**

Changes and renewal are done centrally.

WATCH-OUTS

- 01 Each design is paid**

The application allows to include a hundred designs, but each one has its corresponding fee.
- 02 Russian roulette effect**

Although some Offices allow to modify the national application to comply with local regulations, an incurable drawing issue may lead to a complete loss of design rights.
- 03 Lack of harmonization in the drawings**

They are judged according to national criteria (which are very disparate), so it is impossible to have an application suitable for all of them.
- 04 Less duration**

In contrast to regions where it is granted up to 25 total years (e.g. Malaysia), this system provides a maximum of 15 years (initial period of 5 years renewable for five years).

CHAPTER

03

The profitable side of IP

7+ WAYS OF MAKING MONEY

Intellectual property is almost inevitably associated with a profit-making motivation. It is precisely the possibility of obtaining an economic return that constitutes the greatest incentive to research and create, and to risk throwing new ideas in a market thirsty for them.

However, it may not be so well understood that intellectual property offers a wide range of ways to monetize this protected innovation.

Many factors come into play, such as your aspirations, size of the investment required, profitability that you usually have and

expect to obtain, risks involved, level of control over user experience or what your desired business model demands.

Of course, there is no one-fit-all approach, nor one that would work in all and every country. The level of maturity of the market, the type of competitors, the supply chain, local demands, logistics or legislative import or sales limitations may make it more advisable to have a different business model for your same company according to the country and the moment. So don't be afraid to review your strategy and adapt it when needed.

01

Self-commercialisation

What is it

The most popular and simple way to get an economic return thanks to IP. It is simply to take advantage of the exclusive right provided by registered IPRs to assert a competitive advantage over your competitors.

Advantages

A

Whoever wants what you offer, has to knock on your door. And they will get the final product or service directly from your hands.

B

It is ideal to avoid headaches with partners. Well-established companies can benefit from this model and even build on it an elitist model, limiting the number of units produced and raising the selling price for a select clientele. Welcome to the VIP waiting list.

Disadvantages

A

You're alone in this. You'll have to fend for yourself against potential infringers and the extent of your expansion will be limited to your own capacity. If people demand more of your product but you are not able to produce more, you risk losing customers.

Exhaustion of the Right

IPRs lose their strength as soon as the product that incorporates them is sold by you or with your permission. Our IPR would not allow you to stop others from resell, for instance.



02

Subsidiary

What is it

You may prefer entering into a new country on your own, either via selling points, an exact copy of your headquarters, or a factory that allows you to lower costs (even for your own country). This international multipresence is not within the reach of everyone because of the resources involved (which is why in the Philippines they presume that international companies are big companies), but they are excellent for entrepreneurs who want to enjoy public funds for internationalisation (which usually requires maintaining legal status in the country of origin).

Advantages

A

You have full control over the production and avoid possible irregularities in the production. In countries like Thailand refilling is a very common form of counterfeiting and practice. They use the same packaging (protected by industrial design or 3D trademark) and fill it with products of lower quality or different characteristics to the original, without renouncing the goodwill of the brand.

B

You control sales channels, increasing profit margins, and being able to tailor your IP strategy on the fly.

Disadvantages

A

Venture into new markets on your own involves many risks.

B

The investment needed to land in a new market can be considerable.



03

Distribution with a local partner

What is it

The agreement consists in the delivery of the final product for the local partner to market in their establishments and sales channels.

Here it is vital to foresee everything related to IPR, especially your trademark registration. Don't forget to register first. You can designate your local partner to register it, but remember to include a clause in the contract that states that it should be registered in your name. The so-called agent mark is a very common phenomenon.

Advantages

A

Allows you to entry with a relatively small investment.

B

Reducing the risks of an unknown market.

C

You take advantage of the good reputation of the distributor.

Disadvantages

A

Lower profit margins.

B

Loss of control over the final form of sale.

C

If the local partner does not work well, you run with the discredit.

04 Licensing

Set it in stone

As a general rule, the parties can agree what they want and how they want it (always in writing), but it is advisable to include at least the following clauses:

- Personal data of the parties
- Type of license (exclusive, non-Exclusive or sole license)
- Identification and definition of the IPRs licensed
- Rights and obligations of each party
- Duration of the contract
- Right for the Licensee to sublicense
- Territory covered
- Rights on possible improvements of the licensed IPRs and their ownership
- Compensation (type, modalities, amount, etc.)
- Penalty clauses
- Confidentiality
- Applicable Law and Competent Jurisdiction in case of infringement of the licensing agreement
- Alternative Dispute Resolution systems

Downloading templates from the Internet or recycling a colleague's one is tempting but not the right way. They can serve as a base, but you will have to adapt it to your case -and better if you do it with a professional.

What is it

As simple as giving permission to use something, but with a fancy name. The particularity is that it is done in agreed concrete terms. This agreement can be a one-time agreement, but conditions can also be set in advance and whoever fulfils them can join and enjoy it. The latter is what many artists do, using platforms such as Envato Market, iStock or Printify.

Cross-licensing is a way to access new designs without paying money in return. It's an agreement with another entrepreneur to use registered IPRs in exchange for letting him use yours. Obviously, there must be an equivalent value between the/the right/s in question.

Advantages

A

You can reach many more customers (non-exclusive licenses) or ensure a regular cash flow, if you find a good partner (exclusive license).

B

The exhaustiveness of the clauses of the contract allows you to set the best conditions of the relationship for you, being able to end it if you do not want to continue.

C

If you are diligent and have a good relationship with licensees, you can get feedback that will help you improve your creations. Don't forget to include ownership clauses in case of improvements to avoid unnecessary disputes.

Disadvantages

A

The license agreement may be subject to the validity of the linked IPR (e.g. trademark or industrial design), so you have to make sure that you registered it correctly (strong IPR) and maintain it (paying fees and taking legal action against infringers). If it is cancelled or expires, the business is over.

B

Some countries do not have specific regulations (e.g. Thailand).

C

Controlling what the licensee actually does is not always easy. If you don't get access to their ledgers it's very difficult to calculate the royalties they owe you (e.g. if it's based on a percentage of sales). Trust is the key.

D

Design may be out of fashion and the obligation to maintain certain levels of sales by the licensee may be very difficult to achieve or entirely impossible.

05 Joint venture

What is it

It is the meeting point of entrepreneurs who do not want to give up the market positions they already occupy and want to embark on the adventure by founding a new company. It's not a merger. It's a whole new thing. Burden and benefit sharing is often balanced, so the level of involvement and return is often higher than in the distribution agreement.

Advantages

A

Take advantage of the good reputation of the brands of the companies of origin without putting them at risk.

B

It can be dissolved or sold to others, making profits with the operation and maintaining prestige (or even increasing it if the buyer does it well).

Disadvantages

A

In terms of IP, it means practically starting from scratch. You have to create a new brand, able to take advantage of the goodwill of the previous brands and differentiating it at the same time.

B

The level of autonomy is lower, since consensus or heavy planning/freedom are usually the usual standard (with the cost/risk involved).

Creative Commons

The use of Creative Commons type licenses is one of the most realistic options when intending to balance control and dissemination on the Internet. It allows you to easily communicate to others what kind of use you allow them to make of your copyrighted works. Attribution of authorship is always present, so anyone can contact you for future collaborations, prevent someone else from earning some brownie points, and disarm infringers who claim not to know that it was protected by copyright.

06 Franchise

What is it

The hybrid between opening a subsidiary and -non-exclusive-licensing. It is the business model for those who do not love risks. The franchisees bet on a successful formula and the franchisors maintain the strictest control.

In order to access this type of model, you have to carefully identify and strongly protect all the IPRs involved. It is thanks to how well systematized it is that it is so attractive for franchisors. They receive extensive and detailed documentation, including the IPRs and the use they can/should make of them, as well as timely training and support. Therefore, they generally involve trademarks, know-how (trade secret), industrial designs and copyright, which protect the product/local name, business processes, packaging/furniture/product appearance and catalogues, promotional content, website, etc.

Advantages

- A** Almost total control, especially in terms of brand reputation.
- B** User experience control (form of final product/service delivery).
- C** Access to rapid financing.
- D** Easy negotiation.

Disadvantages

- A** High cost in terms of IP protection as well as monitoring.
- B** The process is rigid and full of legal documentation to be prepared and enforced.
- C** Anything not provided for in the contract is difficult to incorporate/correct (especially if the franchisor does not feel like it).

Watch out!

Thailand has new **Franchise guidelines** that seek to end abusive practices and uncertainty and that you must carefully observe, because not doing so can lead you to pay an administrative fine of up to 10% of annual revenue in the year of violation.



07 Assignment

What is it

Along with licensing, the most popular of exploitation models. The most prolific innovators (and the smallest companies) have in it the best way to monetize their creativity. Under this agreement, all or part of an IPR is passed on to a (generally larger) company. Money is received in return (usually, a lump sum), but you lose it forever. It's not a loan, it's a goodbye.

The acquirer may know best how to use it and complement the protection of IP with other rights not originally provided for.

Advantages

- A** Rapid recovery of the investment.
- B** Can be used to be hired/absorbed by the other company.

Disadvantages

- A** Total loss of control, for better or for worse.
- B** In case of undervaluation, there is no way back.

08 Other -lucrative- uses of IP

What is it

Like money or any other tangible property, IPRs have more value than is merely derived from their direct or indirect exploitation.

Given that today the value of the best companies is constituted by 90% of its intellectual capital¹, it stands to reason that the bargain power of the company holding IPRs is higher. This has practical applications in merger and acquisition transactions, and in negotiations with financial institutions. Many are already beginning to recognize IPRs as collateral for loans. Some even anticipate the expected amount of expected royalties (although it is very risky). In addition, it is a powerful source of attraction for private investors, and talent (which has a positive impact on the generation of more innovation).

Without forgetting that the innovation contests are usually very well endowed and involve very good publicity.

¹Source: *Ocean Torno*

Grab it firmly!

Business models are not registrable as IPRs. That's why Grab, the company founded by Malaysian entrepreneur Tan Hooi Ling, followed the same business model as its predecessor Uber. In addition to attracting capital thanks to the innovative (local) component of the company, registering its name as a trademark was the key to growth. In fact, the 2011's Harvard Business School New Venture Competition gave Mr. Hooi Ling the boost he needed to launch MyTeksi mobile application, released the following year. Rebranding has been one of the tipping points to its success. In 2013, MyTeksi was renamed GrabTaxi, and with it, giving the differential core to the rest of the Grab Holdings Inc. trademarks (GrabCar, GrabBike, GrabHitch, GrabExpress, GrabMart, GrabSupermarket and GrabCare).



CHAPTER

04

Enforcing what's yours

WHAT CAN YOU DO AGAINST COPIES AND OTHER INFRINGEMENTS

It may sound silly, but you cannot break an egg if there is no egg. In the event that you do not have your IP rights registered (i.e. trademarks and industrial designs) or a proven copy has actually taken place (for copyright), you are entitled to dislike it, but not to claim anything.

Therefore, the first thing you need to do is to be sure that the other company has effectively infringe your Rights. This may involve a somewhat more thorough (and cautious) research than you thought, because you must gather the evidence that will allow you to take the next step.

Hand in hand with your IP attorney, you must complete the evidence collection and strategy statement.

Depending on the scope of the infringement, possible damages or any other strategic factor, you can choose to send a Cease and Desist letter (C&D), urging them to desist and withdraw the infringing products, under threat of taking legal action.

It is true that small businesses often did not know that they were infringing, so it is strongly recommended to include signs such as "TM", "®", "registered design", "©" or "All rights reserved" so there is no doubt.

Normally, at this point the alleged infringer checks if you are right (if your Rights are registered in the specific country, if they meet all the requirements for it, or if they have already expired, for example), so you should do this first with your lawyer.

Alternative Dispute Resolution

Most conflicts are settled by agreement (e.g. in Philippines), especially in countries that do not have specialized courts (Brunei Darussalam, Cambodia, Lao PDR, Myanmar and Viet Nam).

Negotiation, through mediation, is a rising alternative, helping to avoid going to court (with the corresponding cost and uncertainty). Along with arbitration, they provide a way to clear the dispute with a licensee or distributor who have crossed the line.

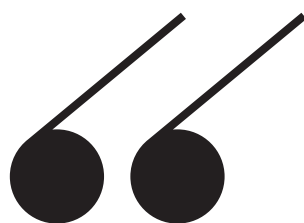
Arbitration involves appointing a person (or body) to judge who is right. The parties submit to it voluntarily, but are then obliged to abide the award. If the infringer is still resisting, you will have to go to court, not to be tried again, but to be forced to comply with what has already been decided.

The good thing is that you can choose the

arbitrator, the rules that apply and the language, so there are many guarantees that the decision is fair.

In the case of mediation, it is only a matter of hiring an expert in mending fences. No one has to abide by what he/she suggests.

This type of dispute resolution is usually included in contracts, as a supplement or alternative to heavy legal actions.



Administrative actions

If the offender does not want to cooperate, you would have to scale it up and take administrative actions (available in Brunei Darussalam, Indonesia, Lao PDR, Philippines and Viet Nam).

Except in countries where they have quasi-executive powers (e.g. Philippines), administrative actions are aimed at clarifying whether the trademark was well granted, the industrial design was novel, or disputes relating to the terms of a license involving the author's rights to public performance or other communications of their work, for example. Small-scale violations are handled well here. Those who do not take seriously such agencies (especially repeat offenders), do not even respond to notifications, and you will be forced to raise the level.

In the ASEAN countries, it is especially useful to reinforce your evidence with a document that has been notarised and legalised in the country where it was issued.

Enforcement

In online infringements it is vital to screen-capture and collect as much information about the infringer as possible before acting.

Online sales platforms and social networks often have notice and take-down and abuse reporting services.

In addition, there are specialized police units (e.g. Center of Operational Policing for Thailand against Intellectual Property Violations and Crimes on the Internet Suppression - COPTICS).

But in addition to selling physical products, there are many online business models that infringe IPRs, about which you can learn more on our website, as well as on the [Challenges and Best Practices in Prosecuting Online Intellectual Property Infringement Cases](#), [Measures to combat IPR online infringement - legal framework and initiatives in Thailand](#), [Best Practices on Investigative Techniques and Intelligence Gathering in relation to Online IPR Infringement Cases](#), and [IPR Protection and Enforcement in the Digital Age: Trends, Issues, and Challenges](#).

E-MARKET PLACES

It is no coincidence that most counterfeit products are sold through this channel. The unauthorised use of copyright (e.g. photographs and text), trademarks and industrial designs by other companies is very common (although the final product may not match). However, more and more regulations are increasing the liability of online service providers, which has led to a remarkable improvement in intellectual property policies. Platforms like Alibaba, JD Group or Pinduoduo are getting stricter in intellectual property defense, and others like Amazon have agile notice and take-down tools, such as Amazon Brand Registry (available in a few countries) and

Amazon Project Zero (which includes automated protections, self-service counterfeit removal and product serialization) that work very well. Joining these programs implies proper IPRs protection and you and ownership certificate submittal. On the other hand, social networks (i.e. Instagram or Facebook) are also used as direct online sales platforms. In addition to counterfeits, there are other types of infringements, as there are companies that sell imitations (even of better quality) of furniture or clothing protected by designs or copyright, under their own brand.



The ultimate frontier: going to court

Civil courts decide on damages, and they can help you stop the violation, but you do all the work. The judge only decides on what is requested (and can be proven).

The criminal courts go further. They can impose large penalties, such as the destruction of the merchandise, the machineries with which they produced it, the payment of significant fines (e.g. up to 38,000€ in Viet Nam) or the entry into prison (e.g. up to 3 years in Thailand or 5 in Cambodia). In addition, they can help conduct investigations -or raids- that include the use of force (e.g. police entry into clandestine premises or opening containers). But they are usually limited to copyright and trademarks (e.g. Viet Nam). Keep in mind that these processes are long, they must be well grounded (e.g. in Singapore you have to be very precise about the legal basis) and they can be more expensive than you expected (a raid in Indonesia is very time-consuming and can cost up to 12,000€).



Let's B2B: Get ready your business card and more...

More and more trade fair centres have effective intellectual property policies that allow them to identify violators beforehand and act quickly when they are detected. They usually coordinate with the police to hold and remove infringing products, but you should be ready to perform that function with local authorities, having all the necessary documentation to prove the violation at hand (including your IPR certificates of ownership).

Do you want to know more about enforcement

If so, check our [website](#), where you will find publications on how to enforce your rights in Lao PDR, Brunei Darussalam, Cambodia, Indonesia, Philippines, Thailand or Viet Nam (in English and in the local language).

Customs: the IP antibodies

In the event that the infringing products are imported, counting on border authorities will help you greatly reduce the damage. Countries like Thailand, Philippines, Lao PDR or Viet Nam have Custom records (usually for copyright and trademarks, except in Philippines, which also support industrial designs) and ability to review and stop suspicious merchandise.

In such cases, it is enough to send the documentation that proves that you are the rightsholder and they are responsible for monitoring and notifying you when they see something strange. Training them is the best you can do for you.

In Indonesia, it is legal but unusual, and in Singapore, it is more like a whistle-blowing, so they can intervene a concrete shipment (like in all ASEAN countries).

Please, notice that the Customs Offices are completely independent of the Intellectual Property Offices. You're the one who has to send the data and keep it up to date.

In Cambodia, licensees and exclusive distributors are allowed to request border control measures, but only if agreements involving transfer of IPRs are registered with the Intellectual Property Offices.





SEEK PROFESSIONAL ASSISTANCE

GOOD INTELLECTUAL PROPERTY PRACTICES



THINK INTERNATIONALLY



IDENTIFY RELEVANT IPRS

For your business and secure them



REGISTER RELEVANT NAMES

And slogans as trademarks



FOLLOW THE PLAN

Register IPRs exactly as you plan to use them (and use them!)



CHECK WHEN IT'S RENEWAL TIME

And make sure you pay the fees on time



CREATE A SYSTEMATIC DATABASE

With all licenses, authorship and ownership documents



INCLUDE IP CLAUSES

In your contracts where ownership and use are clear



REGISTER YOUR LICENSES

Or any other contract involving IPRs transfer



BETTER WITH CUSTOMS

Register your industrial designs and trademarks with customs authorities

RELEVANT LINKS

ARISE+ IPR

ariseplusipr.eu

EUIPO

euipo.europa.eu

ASEAN TMview

asean-tmview.org

EUIPO TMview

tmdn.org

WIPO's Global Trademark Database

wipo.int/branddb/en

Nice classification

wipo.int/classifications/nice

ASEAN DesignView

asean-designview.org

DesignView

tmdn.org

Classification of Locarno

wipo.int/classifications/locarno

WIPO Madrid Fee Calculator

madrid.wipo.int/feecalapp

Madrid System

wipo.int/madrid

Hague Agreement Concerning the International Registration of Industrial Designs

wipo.int/treaties/en/registration/hague

Berne Convention for the Protection of Literary and Artistic Works

wipo.int/treaties/en/ip/berne

ASEAN STATS

aseanstats.org

ASEAN Intellectual Property Association

aseanipa.org

South-East Asia IP SME Helpdesk

ec.europa.eu/ip-helpdesk

World Intellectual Property Office

wipo.int

IP REGULATION

Brunei Darussalam

rb.gy/s1jhnk

Cambodia

rb.gy/pcjct8

Indonesia

rb.gy/fmdha8

Lao PDR

rb.gy/ppx0rb

Malaysia

rb.gy/hxwfmk

Myanmar

rb.gy/tzqk7e

Philippines

rb.gy/xfcefg

Singapore

rb.gy/sdeehk

Thailand

rb.gy/sfayxp

Viet Nam

rb.gy/ovypqe

TRADEMARK E-FILING

Brunei Darussalam

bruipo.gov.bn/Site-Pages/efiling.aspx

Cambodia

efiling.cambodiaip.gov.kh/efiling

Indonesia

merek.dgip.go.id

Malaysia

iponline2u.myipo.gov.my/myipo/www

Philippines

rb.gy/ev6gtr

Singapore

rb.gy/83djtj

Thailand

rb.gy/iyy7xn

Viet Nam

rb.gy/fryocr

INDUSTRIAL PROPERTY OFFICES

Brunei Darussalam

hbruipo.gov.bn

Cambodia

cambodiaip.gov.kh

Indonesia

dgip.go.id

Lao PDR

dip.gov.la

Malaysia

myipo.gov.my

Myanmar

ipd.gov.mm

Philippines

ipophil.gov.ph

Singapore

ipos.gov.sg

Thailand

ipthailand.go.th

Viet Nam

ipViet Nam.gov.vn

TRADEMARK SEARCHING PORTALS

Brunei Darussalam

bruipo.gov.bn/Site-Pages/searchportal.aspx

Cambodia

cambodiaip.gov.kh/-SearchMark.aspx

Indonesia

e-statuski.dgip.go.id

Malaysia

rb.gy/i5fgc3

Philippines

www3.wipo.int/branddb/ph/en

Singapore

ip2sg.ipos.gov.sg/RPS/RPSLogin/S-PLLogin.aspx

Thailand

tmsearch.ipthailand.go.th

Viet Nam

iplib.noip.gov.vn

COPYRIGHT OFFICES

Brunei Darussalam

agc.gov.bn

Cambodia

mcfa.gov.kh

Indonesia

dgip.go.id

Lao PDR

dip.gov.la

Malaysia

myipo.gov.my

Myanmar

ipd.gov.mm

Philippines

web.nlp.gov.ph/ipophil.gov.ph

Singapore

ipos.gov.sg

Thailand

ipthailand.go.th

Viet Nam

cov.gov.vn



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LinkedIn

linkedin.com/company/euipcooperation



Youtube

[EU International Intellectual Property Cooperation](https://www.youtube.com/EUInternationalIntellectualPropertyCooperation)



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