

## INTELLECTUAL PROPERTY HARMONISATION WITHIN ASEAN AND APEC

*Max Planck Series on Asian Intellectual Property Law.  
Edited by Christoph Antons, Michael Blakeney and Christopher Heath  
The Hague: Kluwer Law International, 2004. Pp. vii, 247.*

JEANETTE S. ALVAREZ\*

The development of intellectual property rights in Asia has been nothing but dramatic in the last couple of years. Spurred by the TRIPs (Trade Related Aspects of Intellectual Property Rights) Agreement, since 1995 most Asian countries have completely overhauled their intellectual property systems, or are still in the course of doing so, like Japan and Korea. Implementation of the TRIPs Agreement, though desirable, was not an easy task for member countries, namely Vietnam, China and Taiwan. Some of the requirements were considered unreasonable by a handful of countries due to strict time frame requirement of implementation, burdensome costs, questionable effectiveness of some of the provisions and other negotiating considerations. These concerns were aptly addressed in the WTO Ministerial Meeting in Doha providing for answers, compromises and general reform proposals in the implementation of the agreement.

Responding to this dynamic yet newly traversed avenue of intangible rights, this book grew out of a comparative study on the role of intellectual property law in the ASEAN and European commercial unions carried out by the editors from 1999 to 2001. In our country, intellectual property journalism had been confined within the four corners of what the law allows and prohibits, the sanctions for violations and the extent of beneficial gain from such intellectual property rights. In this book, extensive discussions on the policies of European, ASEAN (Association of

---

\* UST Law Review – *Business Manager*.

Southeast Asian Nations) and APEC (Asia-Pacific Economic Cooperation) nations on intellectual property rights and its harmonisation with each other have been crafted to provide a wider view and better appreciation of the importance and worth of intellectual property harmonisation in various countries. While this book educates one on the evolution of intellectual property and arouses positive reception on its significance, its full value will be more absorbed and applied when corroborated with ample knowledge of our own country's law on intellectual property rights. The writer of this book review encourages an approach of correlating the lessons of this manuscript with, at the minimum, basic knowledge of the Philippine's Intellectual Property Code of 1997 (RA 8293) enacted January 1, 1998.

The common difficulty in the attempt to harmonise intellectual property rights is the legal issue of cross-border, which signifies material divergence in the structure and manner of implementation of each nation's own intellectual property law characterized by disparities in cultural traditions and historical backgrounds. The approaches which have shown potentials to deal with these issues are the uniform law approach, harmonised law approach, conventional approach and the conflict-of-laws (choice-of-law) approach. Adoption of a single approach seems insufficient to hurdle cross-border issues, hence nations deem it more effective to utilize a combination of two or more approaches.

The international harmonisation of intellectual property systems is driven by the industrialized countries that have fairly advanced systems of intellectual property protection in place. Policies of intellectual property harmonisation in Asia, namely selective adaptation, regional cooperation or the radical approach, are fast emerging. These options were not totally used without difficulties. International cooperation in regional groupings with similar interests becomes an important alternative, but will depend on the building of regional institutions and mechanisms. The last option would be to opt out of the international intellectual property system altogether and to ignore international pressures.

ASEAN is the most established economic grouping in Southeast Asia which has been very successful in the early 1990s but has been experiencing crisis since the economic downturn in Asia in 1997. ASEAN countries have internal differences over the scope and significance of intellectual property as specified in the TRIPs. The apparent consensus for harmonisation of intellectual property (IP) that ASEAN started in 1995 now

faces more contradictory tendencies than at the beginning. Pham Duy Nghia's essay, entitled "Transplanted Law – An Ideological and Cultural Analysis of Industrial Property Law in Vietnam" posits that the reception of industrial property law has not been uniform across Vietnamese society. The special interest groups, which support the enforcement of imported industrial property rights, are not yet fully developed in Vietnam. As a result, right holders cannot fully rely on state institutions to protect their rights.

The APEC forum took up intellectual property (IP) issues in 1995, quite late in the evolution of its program of regional economic cooperation and even then with a measure of caution and uncertainty. IP cooperation was in fact a return to APEC's very roots, turning on its head to the trade law nostrum that "behind the border" regulatory matters were not the province of true trade law. This approach opens possibilities for a broader conception of the nature of the objectives and even the specific obligations under TRIPs. In fine, APEC opted for a collective approach while sketchily illustrated the potential benefits of such regionalizing and for the regional economic cooperation to respond to the deeper and broader array of domestic regulatory and policy challenges on IP than are presented, or for that matter created, by the international legal framework.

Overall, *Intellectual Property Harmonisation within ASEAN and APEC* provides a rich, timely and well-researched collection of comparative studies designed to enlighten readers on the attention needed to be given to intellectual property rights, its nature, structure, means of implementation, protection afforded and obligations to be performed. As numerous trade treaties and actual situations of various countries relating to intellectual property issues were cited in the book, one would appreciate the vast venue of intellectual property rights and the endless horizon for its exploration. Cross-border issues on intellectual property which were considered irreconcilable before are now being blurred by a diverse array of approaches and methods of solving such conflict to choose from. Through all the discussions on **intellectual harmonisation** in ASEAN, APEC and European countries, the author of this book review can see a common focal point of bringing harmony in their intellectual property laws... their desire for utmost protection and economic success. Indeed, the nations' attempt to harmonise IP laws is a continuing process of discovering and rediscovering ways and means to improve its IP rules and an eternal battle for peace and mutual concessions in its implementation. Such tranquility will bring about stability in the country and ultimately, its victory.