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European Union Integration and IP: Lessons for the AEC

As AEC integration moves closer, the EU and ASEAN are becoming increasingly similar. What follows are some of the key points regarding integration and IP as experienced in the EU, and the lessons they provide for governments and IP owners in ASEAN.



The European Community Trademark and the system under the European Patent Convention allow for Europe-wide protection for these types of IP. What key lessons could the AEC take from the EU's past experiences?

Importantly, the European systems in place are designed to make it easier to obtain IP protection across the whole of Europe. This was needed because goods (and people, capital, and services) can move freely around Europe and so IP protection in all European countries became essential. While ASEAN is not going to go quite as far as totally free movement of goods, rights holders need to be aware that due to the increase in the movement of all types of goods around ASEAN and also coming in to ASEAN countries, obtaining IP protection in all ASEAN countries will become more important. ASEAN's 2010 trade figures published on its website (aseansec.org) show that 26% of trade is between ASEAN countries, with China second (11% of ASEAN trade) and Europe third (10%). Therefore, it is not just outside investors that will experience an increase in the movement of goods as ASEAN progresses; it will be primarily the ASEAN countries.

Also, there is no doubt that ASEAN will experience an increase in the number of goods in transit. Each country will have to ensure that its IP laws are clear in relation to the duties of Customs and other authorities to seize infringing goods. Europe is still developing these laws, and in 2011 the Court of Justice of the European Union (CJEU) gave a decision regarding goods in transit en route outside of the EU—generally they cannot be seized unless there is suspicious information on the Customs application form. This shows that the EU's "single market" laws are still evolving.

The Roadmap for an ASEAN Community provides for an integration of customs departments from country to country. The term used is an "ASEAN Single Window." This will mean that IP owners must ensure that their trademark registrations and customs records are all up to date in the coming years.



Is IP law the same in all European countries?

No. European law operates at a level such that the laws of each individual European Union member country must comply with the European Directives—a required minimum. This means that not all countries enact the same wording or degree or clarity of legislation. National courts also have their own rules and procedures. The CJEU hears cases that have been referred to it by the national courts of each member country. For example, a German patent court may ask the CJEU how to interpret a certain IP law.

If the AEC is to work well, there should be arguably a high degree of alignment of IP laws across the region. As to whether there needs to be an ASEAN court, it would probably not be required until ASEAN, as a legal body, is creating its own laws. However, certain countries are likely to have differences in their IP laws. Moving forward, those countries with more robust patent systems are likely to attract greater investment. Notwithstanding that one of ASEAN's objectives is freer movement of capital and investment, if the patent protection is weak in a certain country, the investment may not follow. Such issues may undermine the ASEAN Investment Guarantee Agreement (IGA), depending on how the IGA develops in the future.

The ASEAN Economic Chartbook 2010 (cumulative figures for 2004–2009) shows that the EU leads foreign direct investment into ASEAN with 24.5%, followed by Japan (14%), ASEAN (13.3%), the United States (9.2%), and China (percentage not disclosed).



How does having one European Economic Area affect the rights holder and the consumer?

Goods, once placed on the market by the IP rights holder, are then free to move anywhere. This means prices become almost identical, or are driven down, across the region for the same good, assuming it is easily movable, because the IP holder cannot restrict sales territory. A recent case involving territorial exclusivity of a television broadcast in Europe (of football matches) heard by the CJEU stated that individuals across Europe were free to buy whatever decoder they liked (e.g., the cheapest) and not just the one offered in their country by the company that seemingly had territorial exclusivity. That type of exclusivity does not exist in Europe. The flipside is that for most goods, it will increase the market size considerably as the brand or product becomes available to more people.

As most ASEAN trade is intra-ASEAN, the ASEAN countries should see progressive increases in such trade. Therefore, it is expected that ASEAN brands and technology will become regional in nature, quite quickly. Tourism is an important industry for ASEAN and so hotel chains may well spread geographically across the region, particularly bearing in mind the increase in the freedom of movement of people within ASEAN for nationals of member states.

In summary, and to reiterate, ASEAN-wide IP protection will be vital to any business, whether from overseas or from within ASEAN. Companies will have to develop international IP filing strategies if they are to attract investment or expand overseas, within ASEAN and beyond. 🏠