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# Rajah & Tann Asia Intellectual Property

Newsletter 2023 - 2024

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CAMBODIA | INDONESIA | MALAYSIA | PHILIPPINES | SINGAPORE | THAILAND | VIETNAM

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## Overview

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The field of intellectual property ("IP") has been a hive of activity in the past year. With intangible assets and artificial intelligence ("AI") quickly becoming the buzzwords of the new economy, much attention has been placed on the development of the global IP framework, and how it can adapt to fit the changing needs of the business world.

Intangible assets have quickly become a key driver of economic and business value. Businesses are thus increasingly seeking to commercialise their intangible assets, resulting in growing reliance on the effective function of the global IP machinery. Further, rapid advancements in technology and the rise of generative AI have led to new and potentially thorny issues relating to IP rights, which has driven government regulators to modernise their IP regimes to address such issues.

The speed of IP development shows no sign of slowing down, and businesses and IP holders would be well advised to keep ahead not just of ongoing developments, but of the trends that may be expected to take shape in the near future.

In this annual review, we take a look back at the major legal developments relating to the area of IP and intangible assets in the past year in Southeast Asia. We also look ahead to the trends and expected developments of the year ahead across our regional jurisdictions.

Please click on the links below to access the full collection of our country-specific 2023 IP Newsletter:

- [Cambodia](#)
- [Indonesia](#)
- [Malaysia](#)
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# Cambodia

## *Chronicle 2023*

IP plays an important role as part of Cambodia's economic development. The field of IP is undergoing constant enhancement, with new legal developments contributing to an increase in successful IP enforcement cases, thus providing greater certainty and stability in the country's IP regime.

In 2023, Cambodia witnessed two significant IP developments - the issuance of regulations on the registration of domain names and required information for labelling on goods and services.



### **Launch of Mechanism on Registration of National Domain Names to Protect IP Rights**

To strengthen the protection of IP rights of businesses and individuals, the Cambodian government, through the Ministry of Post and Telecommunication, has taken a step forward by adopting a mechanism on registration of national domain names (including .kh, .com.kh, .net.kh, .org.kh, or .edu.kh.) via an automated system. This aims to establish domain identity and build trust in the respective businesses while protecting the businesses' IP rights. Registering of a national domain name is part of the broader framework relating to IP rights management by ensuring fair competition in the local market and protecting a registrant's business reputation.

**Technology – Domain  
Names**

### **Combating IP Infringements by Addressing Information for Labelling on Goods and Services**

To further focus on consumer protection and combating IP rights infringement via fake products, the General Department of Consumer Protection, Competition, and Fraud Repression ("CCF") of the Ministry of Commerce has set out instructional guidelines

**Consumer Protection –  
Trademark**

on the information required for labelling on goods and services for consumers. Pursuant to these guidelines, any mark and sign/label attached to products shall be identical in format with the one registered with the competent authorities. Starting in 2023, CCF has begun taking enforcement measures requiring such labelling to be in line with the instructional guidelines to identify and distinguish the goods or services and to avoid misleading/false advertising or misrepresentation of product/service features.

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## *What's in store for 2024*

In 2024, the Cambodian government is expected to pursue further initiatives to develop IP-related sectors, further supporting the growth and stability of the industry. These initiatives include the drafting of new regulations such as the Franchise Law, the Law on Establishment of Commercial Court, and the IP Policy.

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### **Cambodia's First Franchise Law**

As the franchising industry continues to develop, Cambodia will soon look to establish a Franchise Law. However, the drafting of the Franchise Law is still at an early stage. Franchising is part of a common business strategy in Cambodia and its development has the potential to enhance Cambodia's economy. The upcoming Franchise Law will thus serve to protect both local and foreign nationals as they commercialise their IP assets under robust IP-related laws and regulations.

*Legislation –  
Franchising*

### **Draft Law on Establishment of Commercial Court**

The Law on Establishment of Commercial Court ("**Draft Law**") is in the process of being drafted and reviewed by the Council for Legislation and Justice of the Ministry of Justice ("**MOJ**") before submission to the Council of Ministers for approval. MOJ is planning to officially establish a commercial court to resolve commercial disputes in Cambodia after this Draft Law is enacted. The primary goal of the Cambodian commercial court is to attend to the resolution of disputes over commercial matters including IP, as well as contract, bankruptcy, international trade, and taxation.

*Dispute Resolution –  
Civil Procedure*

### **Drafting of IP Policy**

The National Committee for IP Rights has finalised a key draft IP Policy for 2023 to 2028, and is preparing for submission of the policy to the Council of Ministers. The draft IP Policy aims to develop Cambodia's IP system, increase Cambodian IP rights protection, encourage innovation, and stimulate the fourth industrial revolution to help realise Cambodia's vision for year 2050.

*Policy – Intellectual  
Property*

# Indonesia

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## *Chronicling 2023*

While 2023 has seen a range of legal developments in Indonesia, the hot topic from an IP perspective is copyright. As with most of the world, early-2023 has seen AI burst onto the scene. The adoption of AI and AI solutions has been widespread, and while most have found it beneficial, there are some who are wary of the issues and risks that may come along with it, including from the perspective of copyright protection and exploitation in Indonesia. To keep up with the ever-evolving AI technology, the Indonesian government has taken early steps to regulate the use of AI. Towards the end of 2023, other copyright subject matters have also become topics of discussion in Indonesia, namely those related to music or song.

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### **Artificial Intelligence**

In anticipation of potential negative impact from the increasing use of AI, the Indonesian government has taken early steps to regulate AI by adopting a 'soft law' approach to AI governance, where ethical guidelines are the norm. Among other initiatives, the government has issued the Ministry of Communication and Informatics Circular Letter No. 9 of 2023 on Artificial Intelligence Ethics ("**Circular Letter**"). Under the Circular Letter, any AI-programming activities must be based on ethical guidelines. One of the ethical aspects of AI activities that must be observed is IP, whereby it is stipulated that implementation of AI is subject to the principles of IP rights based on the prevailing law. For more information, please see our Legal Update [here](#).

### ***Technology – Artificial Intelligence***

## Copyright over Music

Another topic that made the headlines in Indonesia in 2023 was that of songwriters' rights, which came to light when a famous musician in Indonesia prohibited one of his ex-bandmates from performing his songs in a live performance. From there on, multiple songwriters started to announce their own prohibitions against certain parties performing their song(s). This topic did not previously arise because, under the prevailing Copyright Law, there is a provision which stipulates that commercial use of a copyrighted work and/or neighbouring rights products are not considered as an infringement so long as the user has fulfilled its obligations in accordance with the arrangement with the relevant collective management organisation. Unfortunately, no legal action has been taken with regard to such infringement, meaning that there has not been any binding decision from the court of law in this regard. In light of this, many songwriters have begun taking pre-emptive measures by publicly prohibiting certain artists/musicians from performing their song(s).

*Dispute Resolution –  
Copyright*

## Collective Management Organisation for Book Publishing

For years, copyright over books has taken a backseat to the use of copyright in the more popular music and entertainment industry. Consequently, many writers have not been able to enjoy the protection of their intellectual property, specifically in relation to the secondary use of their books, such as copies made by students, etc. Currently, the first collective management organisation for book publishing in Indonesia has been established – Perkumpulan Reproduksi Cipta Indonesia (PRCI). In addition, efforts have also been taken to formulate specific regulations for secondary use of published books.

*Legislation – Collective  
Management  
Organisations*

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## *What's in store for 2024*

The above developments from 2023 are still ongoing, and their impact may be expected to be felt as we progress through 2024. As such, we anticipate further advancement of the law in the respective areas of the regulation of AI, copyright over music and books, and the amendment of legislation on industrial design.

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## Artificial Intelligence

As AI keeps evolving, more clear and specific regulation will be needed to make sure that its implementation does not cause harm to the public. Since copyright is a substantial part of data processing by AI, there is reason to believe that in 2024 the Indonesian government, specifically the Ministry of Law and Human Rights, which oversees the Directorate General of Intellectual Property, will issue more specific law, regulations or guidelines in relation to IP protection in the implementation of AI.

*Technology – Artificial  
Intelligence*

## Copyright

On the issue of copyright over music, it will be interesting to see the development of the matter involving songwriters prohibiting parties from performing their songs. It may be expected that a music copyright holder will eventually decide to initiate legal action for infringement. A decision from a court of law in this area would have a huge impact on the music industry.

As for copyright over books, if the regulation on secondary use of published books is enacted and implemented, then royalties would be required for any copies made of books, whether in whole or partially.

*Dispute Resolution –  
Copyright*

## Industrial Design

In addition, the Indonesian government is also in the process of amending the current Industrial Design Law, which is long overdue for an amendment since its initial enactment in the year 2000. However, considering that 2024 is election year, it is doubtful whether the new Industrial Design Law will be enacted this year.

*Legislation –  
Industrial Design*



# Malaysia

## *Chronicling 2023*

2023 has seen a number of developments in the field of IP, which are part of the Government's and stakeholders' commitment to increase IP protection and enhance the measures available for enforcement of IP rights. In particular, there have been various initiatives introduced relating to the enforcement of existing or amended laws, as well as regulations which had earlier come into force in 2022, thus signalling the continued advancement and utilisation of ongoing initiatives.

Amongst the developments of 2023, there have been initiatives launched to simplify copyright certification and patent applications. The Malaysian courts have also had the opportunity to rule on important issues relating to the protection of confidential information in the employment context.



### **MyIPO Introduces 30-Minute Voluntary Copyright Notification for Creative Industry**

The Intellectual Property Corporation of Malaysia ("**MyIPO**"), through its Copyright to You ("**CR2U**") initiative, has introduced a 30-minute copyright certification process in Malaysia, which is markedly shorter in duration than the previous processing period of three to six months.

**Registration –  
Copyright**

Dr. Mohd Zuhan Mohd Zain, the Chairman of MyIPO, explained that the swift alternative stems from updated procedures following the amendments to the Copyright Act 1987 in 2022, showcasing MyIPO's proactive approach to adapt to industry advancements. Anticipating a notable surge in registrations, he projected an increase of 30% to 40% of applications from 2024 onwards. He noted that the current awareness about copyright notification is suboptimal, with only approximately 6,000 applications received in 2023.

Applicants must meet certain terms and conditions in order to qualify for the 30-minute certification process. Individuals or representatives of copyright owners, recipients, or licence holders are eligible for this initiative. Each application is restricted to a single creative work, with the involvement of no more than five authors in the specified work.

The CR2U initiative is a significant step by MyIPO to usher in positive changes to Malaysia's copyright landscape. Dr. Mohd Zuhan underscored the initiative's acknowledgment of copyright as a pivotal asset in the creative economy, emphasising MyIPO's unwavering commitment to delivering high-quality services to Malaysia's creative community.

## Launch of Patent Prosecution Highway Pilot Program between MyIPO and USPTO

In March 2023, MyIPO and the United States Patent and Trademark Office ("**USPTO**") launched a three-year Patent Prosecution Highway ("**PPH**") Pilot Program. This collaborative effort aims to streamline patent application examinations, allowing applicants in Malaysia to request accelerated examination based on positive results from a corresponding USPTO application.

### *Registration - Patent*

The PPH Program expedites the assessment of patent applications, potentially granting approval within six to eight months. No official fee is currently required for an accelerated examination request at MyIPO. However, an application must satisfy the following requirements:

- (i) The MyIPO application is: (a) an application which validly claims priority under the Paris Convention for the Protection of Industrial Property ("**Paris Convention**") to the USPTO application(s); (b) a Patent Cooperation Treaty ("**PCT**") national phase application without priority claim; or (c) an application which validly claims priority under the Paris Convention to the PCT application(s) without priority claim;
- (ii) At least one corresponding application exists in the USPTO which has one or more claims that are determined to be patentable / allowable by the USPTO;
- (iii) All claims in the MyIPO application for which an accelerated examination under the PPH pilot program is requested, must sufficiently correspond to one or more of those claims indicated to be patentable / allowable in the USPTO;
- (iv) The MyIPO application must be available for public inspection after 18 months;
- (v) A request for substantive examination must be filed at MyIPO at the time of the PPH request.

The PPH Pilot Program with USPTO is subject to a three-year trial period until 1 March 2026, with provisions for extension or termination based on mutual agreement of the offices.

## Malaysian Courts Apply a Modified Test for Breach of Confidence

In the era of information and digital footprints, the Court of Appeal's decision in *Karen Yap Chew Ling v Binary Group Services Bhd & Another Appeal* [2023] 7 CLJ 534 sheds light on the evolving perspectives concerning the law of confidentiality. The case addressed the delicate balance between safeguarding employers' interests and employees' rights to use knowledge gained during the course of employment in similar industries.

In this decision, the Court of Appeal analysed a breach of confidence claim against an employee who, after abruptly resigning in 2019, was found to have copied the company's sensitive database and forwarded work emails to a personal account upon joining a rival firm. The Court of Appeal affirmed the High Court's decision that the employee was liable for breach of confidence, applying the factors for determination of breach of confidence as propounded by Megarry J. in *Coco v AN Clark (Engineers) Ltd.* [1969] RPC 41 ("**Coco test**"):-

- (i) the confidentiality of the information;
- (ii) whether there is communication of the information under an obligation of confidence; and
- (iii) whether there is unauthorised use of confidential information to the company's detriment.

Notably, the Court of Appeal referred to a Singapore case, *I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others* [2020] 1 SLR 1130, which adopted a modified approach to the Coco test and suggested a shift in evidential burden to the defendant to rebut the presumption of a breach once the first two conditions in the Coco test are satisfied.

Additionally, in terms of assessment of damages, the employee in this case contended that the conventional method of assessing damages by relying on the value of the confidential information, as established in *Seager v Copydex (No. 2)* [1969] 1 WLR 809, may not always be the appropriate measure. The Court of Appeal supported the employee's stance and emphasised the inherent flaws in the approach taken by the employer's Valuation Expert in evaluating the value of the confidential information. In coming to its decision, the Court of Appeal highlighted the absence of a market for such information and underscored that the projections and permutations of profits contingent on the misuse of confidential information are based on hypothetical scenarios. The case was subsequently remitted to the High Court for proper assessment of damages.

## E-commerce Platforms Roll Out Brand Protection Initiatives

In a significant move towards fortifying IP protection, Shopee Malaysia has recently revamped its takedown procedure via its Shopee Brand IP Portal. Brand owners or their representatives are now required to undergo a registration process on the portal, coupled with the submission of necessary documentation for the respective brands before initiating a takedown application. Despite this additional step, the newly

**Dispute Resolution –  
Employment –  
Confidentiality**

**Retail and Commerce  
– Intellectual  
Property**

revamped procedure is designed to streamline the takedown process, ensuring that the review of complaints is conducted in an efficient and structured manner in comparison to the previous system.

On a broader regional scale, Shopee has taken a pioneering step in enhancing brand protection through its newly-launched Brand Protection Partnership ("**BPP**") initiative. Unveiled on 19 May 2023, the BPP initiative reflects Shopee's unwavering commitment to brand protection and its desire to foster stronger collaboration with global brand partners. This program offers advanced IP rights protection services, with the aim of empowering brands and rights holders to safeguard their products and IP more effectively. This collaboration aims to develop proactive measures against IP infringement by allowing BPP members exclusive access to services such as expedited processes, proactive controls, and valuable insights derived from bi-annual analytics reports. Notably, participating members will be extended invitations to sign up for a pilot online-to-offline program designed to assist brand owners in offline investigations targeting major counterfeiting networks.

The local authorities have also shown efforts in the enforcement of IP rights in the online marketplace. Recently, MyIPO has joined forces with TikTok to enhance compliance with the country's IP laws. Both entities expressed their shared objective of aligning TikTok's IP policy and enforcement with local regulations. The collaborative effort focuses on providing training and sharing expertise and information on IP matters, particularly for businesses and merchants actively participating in the TikTok Shop.

A pivotal outcome of this collaboration is the establishment of the Intellectual Property Protection Center by TikTok. This integrated platform serves as a one-stop hub for IP rights holders and authorised representatives, facilitating the protection and enforcement of IP rights. Brand owners can now directly submit complaints to TikTok regarding any IP violation or infringement issues involving vendors operating within the TikTok Shop offering linked products.

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### *What's in store for 2024*

Following the ever-increasing rise of AI, Malaysia is aware of and prepared to tackle the many issues and risks which may arise as a result of the use of AI. In particular, many of these risks are in the area of IP and relate to the potential infringement of IP rights. In an effort to embrace technological advancement without compromising the rights of the IP owners and stakeholders, the Government plans to introduce legislation or rules to govern the use of AI. Further, we expect to see amendments to the laws pertaining to industrial designs.

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## AI Spring in Malaysia?

"AI spring" refers to the boom in AI development in the last few years that has seen large corporations worldwide, including Microsoft and GitHub, integrate AI into their products. The legal implications of AI, however, are developing at a slower pace in Malaysia as compared to certain industry leaders.

However, with the rise and widespread use of generative AI such as ChatGPT in the country, the Ministry of Science, Technology and Innovation of Malaysia has expressed interest in implementing an AI Bill to address various issues associated with AI, including generating awareness on AI use, data privacy and managing cybersecurity risk.

*Technology –  
Artificial Intelligence*

## Possible Amendments to the Industrial Designs Act 1996

In 2022, a Consultation Paper (available [here](#)) was issued by MyIPO inviting opinions and feedback on the proposed amendments to the Industrial Designs Act 1996 ("IDA"). The proposed amendments encompass recognition of a wider scope of protection including interior design, exterior design, non-physical product and complex product, introduction of new filing and registration procedures (in particular, procedures for substantive examination of applications in accordance with international practice), and introduction of offences for infringement of industrial design rights. The IDA was last amended in 2013, implementing a worldwide novelty requirement. The new proposed amendments have yet to be tabled in Parliament since the conclusion of the Public Consultation. As the IDA approaches its 25 year anniversary, following the recent amendments to the Patents Act 1983 and Copyright Act 1987 and the introduction of the Trademarks Act 2019, amendments to the IDA can be expected.

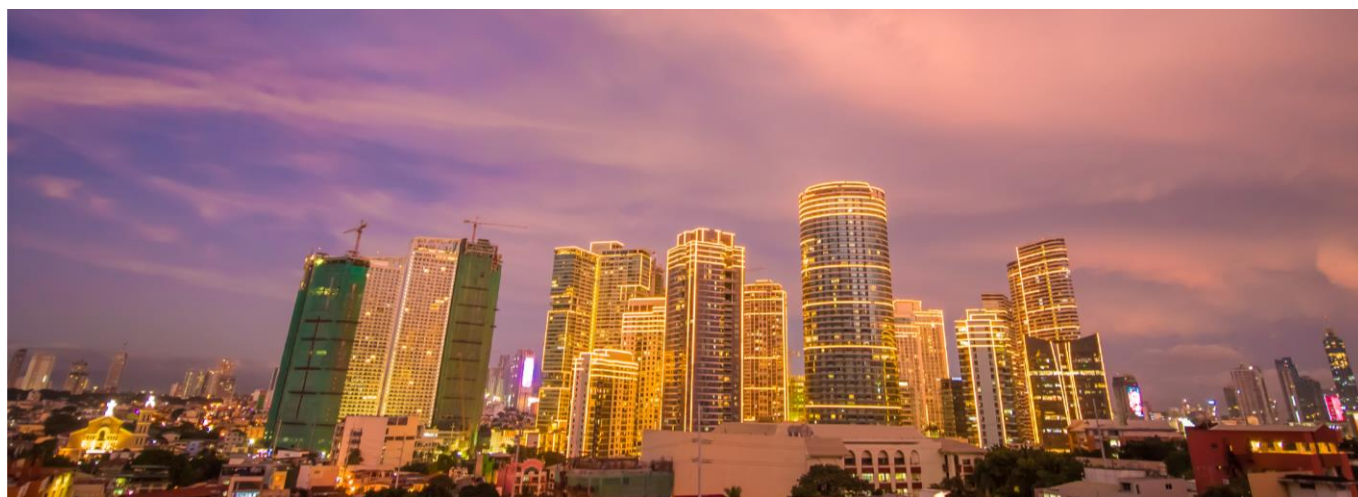
*Legislation –  
Industrial Design*

# Phillippines

## *Chronicling 2023*

Efficiency through the use of technology – this is the mantra that propelled the Philippines to adopt online processes as the mandatory or preferred mode of transactions into its new and revised IP-related rules launched in 2023. Among the notable issuances last year are the Trademark Regulations of 2023, the Public Domain Rules, the Implementing Rules and Regulations on Sound Recording Rights, and the Rules on Voluntary Administrative Site Blocking. They address important topics such as non-traditional marks, terms of copyright protection, rights of sound performers and producers, and site-blocking mechanisms against piracy.

In terms of recent jurisprudence on IP, the Philippine Supreme Court has been firm in invalidating bad faith registrations, while reiterating previous rulings on acquiring trademark ownership through valid registration and the first-to-file rule.



### **Debut of the Trademark Regulations of 2023**

The Intellectual Property Office of the Philippines ("IPOPHL") issued Memorandum Circular No. 2023-001 or the Rules and Regulations on Trademarks, Service Marks, Trade Names, and Marked or Stamped Containers of 2023 ("**Trademark Regulations of 2023**") which took effect on 1 February 2023. Among others, it institutionalised protection of non-traditional visual trademarks (i.e., three-dimensional, color, position, and hologram marks) by specifying their requirements for registration. Even certification marks, which were left out in the old rules, are now defined separately from collective marks. It also realigned filing procedures in view of the automation of business transactions before IPOPHL. While online systems were in place even prior to the issuance of these rules, it is now mandatory that filing and submission shall only be made through the online submission system.

**Legislation -  
Trademark**

Another important amendment is the updating of the list of acceptable evidence of actual use: photographs, and not physical copies, of labels or packaging bearing the mark should be submitted, and photographs of signages bearing the mark on the facade or any area in the establishment where the mark is displayed are now acceptable. As for the filing fee, the first publication fee for opposition must already be paid upon filing of the application, discarding the previous practice of paying the first publication fee upon allowance of the application. Other significant changes introduced include: (a) requiring legalisation or authentication of assignments or transfer documents executed outside the Philippines; (b) abandonment of an application in case of non-submission of a power of attorney within a two-month period; and (c) reckoning the three-month revival period from the mailing date of the notice of abandonment.

## **New Public Domain Rules Clarify Copyright Protection and Public Domain**

In relation to the period of copyright protection under the IP Code and the concept of public domain, IPOPHL issued Memorandum Circular No. 2023-021 or the Public Domain Rules on 8 September 2023. The Public Domain Rules provide guidelines on the calculation of the term of protection and the type of works considered as belonging to the public domain, thereby establishing a new Public Domain Registry in the process.

*Legislation -  
Copyright*

Interested parties may now electronically file a formal copyright term assessment request with IPOPHL's Bureau of Copyright and Related Rights. In addition, a new set of procedural rules in initiating a copyright claim challenge have also been created. Interestingly, the Public Domain Rules explicitly state that "works are not required to be fixed in order to vest copyright protection", effectively forgoing the fixation requirement adopted in other jurisdictions. Nonetheless, in light of the existing rules on copyright registration and deposit, fixation is still required to such extent.

## **Setting the Record Straight with the New Rules on the Rights of Sound Performers and Producers**

The Philippine music scene has evolved through the years, but to further protect the rights of sound performers and producers and ensuring their survival? IPOPHL issued the Implementing Rules and Regulations on the Rights of Sound Performers and Producers of Sound Recordings ("**IRR on Sound Recording Rights**") covered by Memorandum Circular No. 2023-023 on 8 September 2023. While the IP Code already sets out the basic scope of rights of performers and producers of sound recordings, the IRR on Sound Recording Rights amplifies and expounds upon these rights. In addition, the new Single Equitable Remuneration ("**SER**") Rules have been established to ensure payment of compensation for performers and producers. Accordingly, it is the obligation of the user of a sound recording to pay SER per use of sound recording, and this is paid to the performer, producer, or to the concerned collective management organisation pursuant to prior agreements made by the rights holders.

*Legislation –  
Intellectual Property  
Enforcement*

Further, new definitions that are not present in the IP Code have been included in the new IRR on Sound Recording Rights, such as definitions of "generated performance",

"performance of a literary or artistic work", and "performance of a sound recording". Performance made by machines is now legally recognised as a type of generated performance — a daring step towards tech-savvy regulation — while performers themselves still need to be natural persons.

## Pirates Be Warned: New Site-Blocking Mechanism Unveiled

In a move to expand IP enforcement capabilities in the Philippines, IPOPHL issued Memorandum Circular No. 2023-001 or the Rules on Voluntary Administrative Site Blocking on 20 September 2023. A copyright owner or right holder or its representative can now apply for issuance of a "Request to an Internet Service Provider ("ISP") to Block or Disable Access to Websites" against a pirate website. The process starts with filing a verified administrative complaint, through electronic filing or other acceptable modes, before IPOPHL's IP Rights Enforcement Office. An evaluation officer will review the complaint and submit an Evaluation Report within 10 days to the Supervising Director or Deputy Director General, who will then render a decision within five days. If there is a finding of piracy, a Request will be issued to the concerned ISP to disable access to the pirate website, including blocking the Domain Name System, IP address, or Uniform Resource Locator.

**Legislation -  
Copyright**

As part of due process, the website owner or administrator can file a verified protest within five days from receipt or publication date of the Request. The concerned ISP can also file a written objection or request for modification within 48 hours. However, in case of non-compliance or inaction of the ISP, the complaint will be referred to the National Telecommunications Commission for appropriate action.

## Supreme Court in *Zulueta* case: Bad Faith Trademark Registrations Are Considered Void, No Priority Right

Acquisition of ownership through trademark registration is conditional on it being validly made in accordance with the IP Code. Thus, trademark registrations obtained in bad faith or through fraud are considered void *ab initio*. This was the main point in the Philippine Supreme Court's decision in *Manuel T. Zulueta v. Cyma Greek Taverna Co.* (G.R. No. 205699, 23 January 2023) concerning the Greek restaurant brand "Cyma". The petitioner, one of the partners in the restaurant venture, was the first to file the application for "Cyma" in his name. Subsequently, the respondent-partnership filed its own application for an identical mark. When the petitioner's application was published, it was opposed by the respondent-partnership claiming that the latter was the first to use the mark in a test kitchen. The respondent-partnership's application proceeded to registration.

**Dispute Resolution –  
Trademark**

IPOPHL's Bureau of Legal Affairs upheld the respondent-partnership's opposition of the petitioner's application and ruled that the respondent-partnership was the owner of the mark. The Supreme Court affirmed this decision. The Court found that the petitioner's application was made in bad faith given his knowledge of the prior use of the trademark by the respondent-partnership and that it was his other partner who conceptualised the mark. The first-to-file rule generally bars future registration of an identical or confusingly similar mark; however, it does not mean that the first



application should in all cases be granted. Where the first application is unregistrable, the Court held it will not obtain the priority right under the law.

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## *What's in store for 2024*

The Philippines will continue its momentum in making significant achievements in the IP arena. We can already see in the horizon major changes in policy and practice with the proposed amendments to the IP Code and the Rules on IP Violation Cases and the planned accession to the Hague Agreement Concerning the International Registration of Industrial Designs ("**Hague Agreement**"). We also had a glimpse of the advantages of implementing AI technologies in both private and public sectors, such as local banks offering AI-powered financial management tools for customers and the government using AI for disaster risk reduction and management. It is highly anticipated that more applications of AI systems will be seen this year. This leads to discussions on regulation of AI in the country, not only to maximise its benefits, but also to address possible perils it can bring.

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### **Fostering Business Growth and Innovation through Regulation of AI**

At least four bills seeking to regulate use of AI are pending with the House of Representatives, one of which is House Bill No. 7396 entitled "An Act Promoting the Development and Regulation of Artificial Intelligence in the Philippines". If approved, it will result in the creation of the AI Development Authority which will oversee development and deployment of AI technologies consistent with ethical principles and guidelines. Along with the promotion of AI development, the proposed law seeks to establish licensing and certification requirements for AI developers and deployers and a mechanism for reporting and addressing complaints and grievances relating to AI systems deployment.

*Technology –  
Artificial  
Intelligence*

This legislative measure is consistent with the government's National AI Strategy Roadmap launched in 2021 with the goal of maintaining competitiveness of local industries through AI as one of the biggest drivers of innovation. On its part, IPOPHL has acknowledged the advantages of using AI, particularly in its discussions held on 27 October 2023 with the European Union Intellectual Property Office concerning optimising AI tools as part of capacity building and to help more rights holders build a strategy against cyberattacks.

### **Lawmakers Aim to Strengthen IPOPHL Enforcement Capabilities through Revised IP Code**

Since taking effect 26 years ago, the IP Code has undergone substantial amendments, such as switching to the international exhaustion rule for patents on drugs and medicines to allow access to affordable medicines (Republic Act No. 9502 or the Cheaper Medicines Act), strengthening copyright protection by creating the Bureau of Copyright and Related Rights and adopting the landlord liability rule and contributory infringement (Republic Act No. 10372). With the current advancements in technology, opportunities for innovation seem endless; however, this has also allowed infringers to thrive.

*Legislation –  
Intellectual  
Property  
Enforcement*

Thus, Philippine legislators and other stakeholders are on the move to modernise the IP Code. The House of Representatives' Committee on Trade and Industry on 14 November 2023 approved the draft substitute bill that will be known as the Revised Intellectual Property

Code of the Philippines. The aim, among others, is to expand IPOPHL's enforcement function through issuance of visorioral orders in relation to counterfeiting and piracy and issuance of blocking, take down, cease-and-desist, or disabling orders against infringing websites or online locations. Non-compliant persons may be held in contempt based on the proposed amendment. Currently, IPOPHL can only issue a "Request to an ISP to Block or Disable Access to Websites", without the corresponding contempt power.

Other noteworthy proposals include removal of "visible" in the definition of trademarks to allow registration of non-visible marks, inserting solidary liability and contributory liability as forms of trademark and patent infringement, introduction of provisional patent applications, and provision for remedies of a person with a right to a patent.

## Proposed Amendments to the Rules on IP Violation Cases

In a fast-paced world, IP regulatory agencies strive to keep up with and adapt to technological advancements to be more efficient and effective in protecting IP rights. Thus, it is time for IPOPHL to amend the Rules and Regulations on Administrative Complaints for Violation of Laws Involving Intellectual Property Rights ("**IP Violation Cases**"), which were originally adopted in 1998. Among the important changes are: (a) online filing of the verified complaint, answer, pleadings, motions, and other submissions via electronic mail; (b) conduct of hearings via online video conference upon prior agreement of the parties; and (c) service of decisions and final orders by electronic means and/or facsimile if the parties previously consented to such modes of service.

Back in 2022, IPOPHL implemented mandatory electronic filing and service of pleadings, but only for Inter Partes Cases; it was optional for IP Violation Cases covering infringement complaints. With the proposed amendments, electronic filing will be mandatory for IP Violation Cases as well, and non-compliance with the prescribed modes of filing may be a ground for dismissal of the case or for declaration of default. Other proposed changes include the requirement of submission of proof of capacity to sue, in case of juridical entities, and the requirement that judicial affidavits of witnesses must be attached to the complaint.

## Philippines' Accession to the Hague Agreement Already Underway

With the Philippines' accession to the Patent Cooperation Treaty in 2001 and to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks or the Madrid Protocol in 2012, the time has come for its long-anticipated accession to the Hague Agreement in 2024. Within Southeast Asia, the Philippines will be the fifth country to adopt the Hague System after Brunei, Cambodia, Singapore, and Vietnam.

Presently, foreign applicants looking to register their industrial designs in the Philippines must file the application directly through the national filing route. Also, Philippine-based applicants must file separate applications in the countries or jurisdictions where they wish to seek protection. With the adoption of the Hague System, applicants will have the option to file a single application for industrial design registration and pay a single filing fee, and then elect member countries or regions in which they wish to obtain protection. Each designated country or region will review the application further based on local legislation and render a decision on whether to grant registration. The applicant will thus have a simplified and centralised process of managing its industrial design portfolio.

*Dispute  
Resolution –  
Civil Procedure*

*Registration –  
Industrial Design*

# Singapore

## *Chronicling 2023*

The IP landscape in Singapore witnessed several significant developments in 2023, which are intended to enhance the protection, valuation and management of IP rights. Such initiatives are in line with Singapore's IP Strategy ("**SIPS**") and are part of Singapore's 2030 IP Strategy programme, which is a national strategy that supports enterprises and the wider innovation community. The developments include the launch of Singapore's Intangibles Disclosure Framework which enables businesses to disclose their own IP and intangible assets in a consistent manner, and to support the monetising of such assets. There have also been significant case law developments relating to geographical indications and copyright infringement, and the introduction of new dispute resolution mechanisms which cater to IP disputes.



### **Launch of Intangibles Disclosure Framework**

To address the valuation and reporting of intangible assets in this digital economy, the Accounting and Corporate Regulatory Authority and the Intellectual Property Office of Singapore jointly launched the Intangibles Disclosure Framework in September 2023. Through the framework's four pillars of Strategy, Identification, Measurement, and Management, enterprises are able to disclose and identify the value of intangibles, such as brand value, patents and human capital, and to provide stakeholders with consistent information about an enterprise's intangibles, so that a more informed assessment of their business and financial market prospects can be made. For more information, please see our Legal Update [here](#).

**Corporate  
Commercial –  
Valuation**

### **Singapore Court of Appeal Case Sets out Approach for Geographical Indications Registration**

In *Consorzio di Tutela della Denominazione di Origine Controllata Prosecco v Australian Grape and Wine Incorporated* [2023] SGCA 37, the Singapore Court of Appeal set out the

**Dispute  
Resolution –**

two-step approach to be adopted under section 41(1)(f) of the Geographical Indications Act ("GIA"), which is a ground on which a geographical indication ("GI") can be refused registration. First, one must consider whether the name of the GI sought to be registered contains the name of a plant variety or an animal breed. This is to be done on an objective basis.

**Geographical  
Indications**

Second, once the first element has been satisfied, the next inquiry is whether the GI sought to be registered is likely to mislead consumers into thinking that the product could only originate from the specified region when in fact, its true origin could be other geographical locations where the plant variety or animal breed used to make the product is found. In answering this question, it is necessary to focus on matters which the Singapore consumer is aware of given that such awareness naturally affects whether the Singapore consumer is likely to be misled by the GI that is sought to be registered. Ultimately, the Court of Appeal held that the registration of the "Prosecco" GI would not be likely to mislead the Singapore consumer to the true geographical origin of "Prosecco" as there was insufficient evidence of the same. As such, the "Prosecco" GI was allowed to be registered as a GI for wines in Singapore. For more information, please see our Legal Update [here](#).

## **Court Finds Employer Vicariously Liable for Use of Unauthorised Software**

In *Siemens Industry Software Inc v Inzign Pte Ltd* [2023] SGHC 50, the Singapore High Court found an employer to be vicariously liable for its employee's actions of installing an unauthorised version of a commercial software onto a company laptop. The High Court held that the doctrine of vicarious liability extends to copyright infringement, and found that there was a special relationship between the employee and the company by virtue of their relationship of employment, and that there was a sufficient connection between the employment relationship and the commission of copyright infringement. The High Court determined that the circumstances in which the employee was allowed to discharge his duties afforded him the opportunity to commit the infringing acts, and that it was the company's lack of supervision of the employee that afforded him the latitude and opportunity to commit the infringing acts. For more information, please see our Legal Update [here](#).

**Dispute  
Resolution –  
Employment**

## **Decisions on the Simplified Process for Intellectual Property Matters and on the Locus Standi of an Exclusive Licensee to Sue for Copyright Infringement Notwithstanding its Grant of a Further Sublicense**

The Singapore High Court in *Tiger Pictures Entertainment Ltd v. Encore Films Pte Ltd* [2023] SGHC 138 issued the first judgment in relation to an application for an intellectual property claim to be determined under the Simplified Process for Certain Intellectual Property Claims ("**Simplified Process**"). The Simplified Process is an optional "fast track" for IP litigation. In this case, the Claimant commenced an action against the Defendant for infringing its copyright in a Chinese film. The Claimant was the exclusive licensee for the film and had entered into negotiations with the Defendant via text messages and email regarding a possible agreement for the Defendant to distribute the film in Singapore. No written distribution agreement was reached, but the Defendant proceeded to release the film for screening in Singapore, alleging that a binding distribution agreement had been reached through parties' text messages and emails. The Claimant sued the Defendant for copyright

**Dispute  
Resolution –  
Copyright**

infringement. The Defendant counterclaimed for groundless threats of infringement, and alleged infringement of copyright in a different film.

The High Court found that the requirements for the Simplified Process were met due to the following reasons: (a) the issues were not legally or factually complex as the Claimant's case turned on a single question on whether there was a legally binding distribution agreement between the Claimant and the Defendant; (b) the Defendant's counterclaims bore no merit; (c) the estimated length of the trial would not exceed two days, given that the Claimant's sole witness was willing to travel to Singapore and the Defendant's witnesses would not require cross-examination for more than two days; and (d) the quantum of the Claimant's claim rendered it a suitable case for the Simplified Process, as the damages claimed were low.

Subsequently, the Defendant applied to strike out the Claimant's claim on the basis that the Claimant, an exclusive licensee of the copyright, had no *locus standi* to sue for copyright infringement: *Tiger Pictures Entertainment Ltd v Encore Films Pte Ltd* [2023] SGHC 255. The High Court rejected the Defendant's application and found that despite the Claimant having sub-licensed its rights to a related entity, it remained as the "exclusive licensee" within the statutory definition set out in the Singapore Copyright Act 2021 ("**SCA**"). The High Court also found that the Claimant's related entity could not be a statutory exclusive licensee because its licence was granted by the Claimant and not the copyright owner – and section 103 of the SCA defined an "exclusive licence" to refer to one that was granted by the owner or prospective owner of the copyright. Moreover, there was no evidence to show that the Claimant had acted on behalf of the copyright owner in granting the licence to its related entity. The High Court thus held that the Claimant's related entity had not supplanted the Claimant as the statutory exclusive licensee.

## Launch of WIPO-Singapore ASEAN Mediation Programme

Parties from Association of Southeast Asian Nations ("**ASEAN**") countries can now opt to resolve their IP disputes through the World Intellectual Property Organisation ("**WIPO**")-Singapore ASEAN Mediation Programme administered by the WIPO Arbitration and Mediation Centre's Office in Singapore. This programme is funded pursuant to the WIPO-Singapore Government Memorandum of Understanding, and funding of up to S\$8,000 can be obtained, provided that: (a) the application for funding is made before 31 December 2024; (b) at least one party is an ASEAN national or entity; (c) the mediator is based in Singapore; (d) parties consent to being named in publicity materials; and (e) parties shall provide feedback on their mediation experience.

**Dispute  
Resolution –  
Mediation**

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## *What's in store for 2024*

This year, various developments are expected to be in store in the area of IP law in Singapore. There are a host of initiatives that are set to be implemented in the field of AI. New laws pertaining to the licensing scheme for collective management organisations are also coming into operation. Further, there will be more programs to enhance collaboration in the region pertaining to the prosecution of patents.

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## Model AI Governance Framework for Generative AI to be Finalised in Mid-2024

Singapore has proposed a new governance framework for generative artificial intelligence – the "Model AI Governance Framework for Generative AI" which was jointly developed by the AI Verify Foundation and the Infocomm Media Development Authority. The framework is expected to be finalised in mid-2024, and covers nine key dimensions of AI governance such as accountability, security, testing and assurance. It seeks to address the risks associated with AI, as well as to provide guidance on the safety evaluation of generative AI models. The development of this framework also serves as a way of contributing to the global discussion of AI, with the ultimate goal of enabling trusted development globally.

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Artificial  
Intelligence*

## ASEAN Guide on AI Governance and Ethics Released in February 2024

Singapore has been working with other ASEAN nations to develop guidelines on the responsible use of AI in the region. The ASEAN Guide on AI Governance and Ethics has now been endorsed at the 4th ASEAN Digital Ministers' Meeting (ADGMIN) on 2 February 2024, during which Singapore served its stint as rotating chair. The guide is meant to serve as a practical and implementable step towards the safe deployment of responsible and innovative AI in the region. It aims to help promote consumer confidence and facilitate cross-border deployment of AI-powered services and solutions, enabling ASEAN to fully leverage the power of AI. The guide was developed in consultation with industry partners, and is available [here](#).

*Technology –  
Artificial  
Intelligence*

## Collective Management Organisation Licensing Scheme Scheduled to Come into Operation in May 2024

To enhance Singapore's collective management ecosystem, the Copyright (Collective Management Organisations) Regulations 2023 has set out a new collective management organisation class licensing scheme, which will come into operation on 1 May 2024. The licensing scheme sets out a list of licence conditions surrounding the key areas of members' rights, the distribution of tariffs, dispute resolution, ensuring good governance, and the information to provide to the public. It applies a light-touch model of regulation targeted at five critical areas, while allowing collective management organisation to have the flexibility to choose how they can best comply with the licence conditions. For more information, please see our Legal Update [here](#).

*Legislation –  
Collective  
Management  
Organisations*

## Two-Year Extension of ASEAN Patent Examination Co-operation AIM Pilot Program

The ASPEC Acceleration for Industry 4.0 Infrastructure and Manufacturing ("AIM") Pilot Programme will be extended for an additional two years until August 2025 in order to allow applicants to continue to leverage on the ASEAN Patent Examination Co-operation ("ASPEC") platform to fast track their patent applications for certain inventions. AIM is a programme under ASPEC which was first launched in August 2019. Under it, if an ASPEC request is made for Industry 4.0 patent applications, there would be a committed turnaround time of six months to receive the first office action (subject to a cap of 50 applications per year).

*Registration –  
Patents*

# Thailand

## *Chronicling 2023*

In 2023, Thailand has been committed to enhancing community connections and deepening understanding of IP rights among small business operators and the wider public. The Department of Intellectual Property ("DIP") has been actively developing electronic systems and channels to streamline access to its services, extending beyond traditional IP prosecution activities like trademarks, patents, copyrights, and customs recordation. The past year's advancements include upgrading the e-filing system for patent applications and establishing a dedicated online platform to streamline the exchange of information between trademark agents and enforcement authorities. These initiatives aim to consolidate information sources and expedite the resolution of trademark infringement cases.

Furthermore, DIP is leveraging on social media to engage with the public and address IP-related concerns, thereby increasing public awareness and interest in IP matters. Simultaneously, Thailand is executing a soft power campaign to globally promote its cultural identity and motivate local businesses to safeguard their products through geographical indication registrations, leading to a significant increase in the number of such registrations within the country. A significant overhaul of the Intellectual Property and International Trade Court's procedural rules has also been undertaken, incorporating technological solutions to make the court processes more efficient.



### **Update of the Intellectual Property and International Trade Court's Procedural Rules**

The Intellectual Property and International Trade Court ("IPIT Court") has implemented significant procedural changes as of May 2023, aimed at modernising and streamlining court processes through technology. These advancements include the following:

- (i) Integration of technology

***Dispute  
Resolution –  
Civil Procedure***

- The IPIT court has adopted new technology into its procedures, notably allowing for witness hearings to be conducted online. This is facilitated through electronic means, ensuring broader accessibility and efficiency.
- Evidence submission has been simplified; parties can now submit documents directly to the IPIT court via email, using the court's official email account. This modern approach facilitates a more efficient case management process.

(ii) Revision of case review processes

- Responding to the increasing number of appeals against the Thai Trademark Board's decisions — particularly those related to trademark registration refusals on grounds of non-distinctiveness or similarity — the IPIT court has updated its rules relating to case review procedure.
- The IPIT court may now base its decisions on the evidence submitted, without necessitating in-person witness testimony. This change aims to alleviate case backlogs and enhance procedural efficiency. However, the effectiveness of this approach, especially given the potential importance of witness testimony in litigation, remains to be fully assessed.

(iii) Language flexibility in documentation

- The IPIT court has introduced increased flexibility regarding the language requirements for submitted documents. Full Thai translations of foreign-language documents are no longer universally mandatory.
- Partial translations — or in some cases, no translations — are acceptable, provided all parties confirm their understanding of the document's content in its original language. This marks a departure from previous practices, potentially expediting the legal process by reducing the burden of translation.

These updates reflect the IPIT court's commitment to leveraging technology and procedural flexibility to improve judicial efficiency and accessibility.

## **Official Expedited Channel for Trademark Registration Established to Streamline the Process**

Under normal circumstances, trademark registration in Thailand takes 12 to 18 months. However, with the implementation of a new policy by DIP effective 3 January 2023, applicants can now expect to receive their examination reports within four months of filing. This expedited process significantly reduces the time frame for trademark registration to six to eight months. It's important to note that this accelerated option is not available to all applications; it is subject to specific criteria. To qualify, an application must be limited to a single class of registration and specify no more than 10 product or service items. Moreover, applicants must demonstrate an urgent need for the trademark's use within the Thai market.

**Registration –  
Trademark**



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## *What's in store for 2024*

Over two decades since its last update in 1999, DIP is set to revise the Patent Act to address contemporary challenges and improve the patent registration process's efficiency. The department is tackling the significant backlog issue, with some patents taking over 10 years to reach the registration stage. The amendments to the Patent Act are designed to streamline these procedures and facilitate Thailand's accession to the Hague Agreement Concerning the International Registration of Industrial Designs ("**Hague Agreement**").

Furthermore, DIP plans to adjust the government fees for patent prosecution, which have been markedly lower than those for trademark prosecution, to better reflect the process's complexities.

In addition, DIP is embracing technological advancements to enhance operational efficiencies. A notable initiative includes the redesign of the trademark registration certificate to modernise its look and incorporate features for easier authentication.

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### **Transformative Updates to Industrial Design Patent Registration**

Thailand is poised to enact major revisions to the Patent Act, marking a significant shift in the industrial design patent registration landscape. These amendments, anticipated for inclusion in the new version of the Patent Act, are set to align Thailand with the Hague Agreement — an advancement long-awaited in professional circles. The proposed changes are multifaceted, including an extension of the protection term for industrial designs from the current 10 years to 15 years, a significant reduction in the response window for office actions from 90 days to 60 days, and a pivotal adjustment in the examination protocol, mandating substantive review prior to any publication.

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Industrial Design*

In a notable advancement last December, DIP made a strategic move by integrating its design records into the DESIGNview search platform. This integration aims to empower designers worldwide by providing them with a robust tool for comprehensive novelty checks of their designs, offering a preliminary assessment of their registration viability at no additional cost. With over 7.8 million searches conducted to date, DESIGNview stands as a testament to Thailand's commitment to enhancing accessibility and efficiency in the global design community.

### **Expansion of the Patent Fast-Track Initiative to Include Future Food Innovations.**

DIP has broadened the eligibility criteria for its Patent Fast-Track Initiative. Originally launched in 2022 exclusively for innovations in medical sciences and public health, the program expanded in January 2024 to encompass advancements in the domain of future foods. This category includes medical foods, innovative plant-based foods, supplements, and organic products that avoid leaving contaminants in their production processes.

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Patent*

For an innovation to qualify for this expedited program, an application for substantive examination must have been previously filed, with the stipulation that the patent claims do not surpass 10 in total. As for petty patent, the application must have been lodged at least

three months prior. Once accepted into the fast-track program, standard patent applications will be subjected to an accelerated substantive examination, guaranteeing examination results within 12 months from the date of approval. Petty patents will benefit from an even swifter timeline, with outcomes promised within six months.

## Enhancing Artists' Rights in Phonogram Recordings: Proposed Amendments to the Thai Copyright Act

The proposed amendment to the Thai Copyright Act seeks to address a significant gap identified in alignment with the World Intellectual Property Organisation Performance and Phonograms Treaty (WPPT). Currently, Section 47 of the Thai Copyright Law only recognises artists' rights for live, unfixed performances, omitting rights for recorded performances in phonograms. This oversight restricts artists from receiving remuneration for the reproduction of their recorded work.

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Copyright*

The amendment aims to rectify this by extending artists' exclusive rights for the reproduction of performances fixed in phonograms. Additionally, it will ensure artists have the right to be credited for their recorded performances, enhancing their recognition and financial rights. This change is pivotal in fortifying the rights of artists and aligning Thailand's copyright protections with international standards.

## Modernising Thailand's Trademark Registration Certificates

Thailand's format for the trademark certificate of registration, unchanged for over two decades, is poised for an essential update to move beyond traditional practices and embrace the digital era. In the traditional way of engaging with authorities, IP practitioners have highlighted the indispensable need to obtain a certified copy of the trademark certificate as crucial evidence for progressing legal cases.

*Registration –  
Trademark*

The redesigned trademark certificate introduces security features, including security paper and a QR code, marking a leap towards digital integration. This modernisation aims to replace traditional verification methods with a streamlined process utilising public key infrastructure, simplifying authentication. Additionally, the certificate has been adapted for easy electronic duplication by trademark agents, with digital signatures guaranteeing the document's authenticity under the Electronic Transaction Act.

This updated trademark certificate will be issued for all registrations from 14 February 2024 onwards, marking a new era in trademark registration in Thailand.

# Vietnam

## *Chronicling 2023*

In the brief span of a year, Vietnam has instituted a comprehensive set of legal documents, including Decrees and Circulars, to establish a well-defined legal framework in the field of IP laws. The year 2023 has witnessed a significant transformation in Vietnam's IP landscape, demonstrating the government's proactive measures to enhance regulations concerning copyrights, patents, industrial designs, trademarks and geographical indications.

The commitment to fostering innovation and safeguarding intellectual property rights is evident through the issuance of various decrees. Decree 17/2023/ND-CP focuses on copyright and related rights, while Decree 65/2023/ND-CP and Circular 23/2023/TT-BKHCN address industrial property. These IP initiatives underscore the government's dedication to creating a conducive environment for the development and utilisation of IP.

The notable increase in IP applications, particularly in the field of IP rights, indicates a growing recognition of the importance of IP. The dynamic approach and dedication of the National Office of Intellectual Property ("**IP VIETNAM**" or "**VNIPO**") has played a pivotal role in navigating Vietnam's evolving IP landscape in 2023.

Further, Vietnam's accession to the Marrakesh Treaty, facilitating access to published works in alternative formats for visually impaired and print-disabled persons, marks a significant step forward.

In summary, 2023 represents a critical period for Vietnam's commitment to innovation, IP protection, and the development of a supportive technological environment.



## Regulatory Updates on Patents

The regulatory updates introduced in 2023 underscore a focus on bolstering IP protection, particularly for patents. The amendments provide explicit definitions for novelty, clarify the right to register, and establish general requirements for patent applications. These measures were strategically designed to enhance transparency and streamline the application process, fostering an environment conducive to innovation.

**Legislation –  
Patent**

In line with the global landscape, the regulations have incorporated security controls for patents filed abroad, underscoring a robust commitment to the international safeguarding of IP rights.

Furthermore, the introduction of evaluations for confidential applications reflects a nuanced approach, striking a delicate balance between transparency and the safeguarding of sensitive information. Decisive actions were taken across various dimensions of IP law, encompassing aspects such as the refusal of protection titles, procedures for title amendments, and criteria for invalidation.

Demonstrating a comprehensive commitment to supporting IP development, the government extended its support to pharmaceutical patent owners by providing compensation for delays in granting pharmaceutical marketing licences. This approach acknowledges the unique challenges faced by the pharmaceutical industry, reinforcing the government's dedication to fostering innovation in this sector.

## Regulatory Updates on Transfer of Rights

The regulatory landscape on transfer of rights has been enhanced by extending the grounds for compulsory transfer of rights to use inventions, with a focus on ensuring fairness and equity in the utilisation of patented technologies. Simultaneously, conditions were introduced limiting the right to use patents transferred under mandatory provisions. This nuanced approach establishes a fine balance that upholds the sanctity of IP rights while fostering a more equitable environment for the utilisation of ground-breaking technologies.

*Legislation –  
Patent*

## Regulatory Updates on Trademark

**Sound Trademark:** Vietnam has amended its Intellectual Property Law to harmonise with the requirements of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, and with global developments. The updated regulation establishes criteria for trademark protection, encompassing visible signs in various forms and the capacity to distinguish goods and services. Particularly significant is the inclusion of sound trademarks, where sound serves as a distinctive element for consumer differentiation. To fortify these changes, the Vietnamese government introduced Decree 65, explicitly incorporating "Sound trademark" as one of the trademark types requiring registration. This aligns with the amendments made to the Intellectual Property Law in 2022.

*Legislation –  
Trademark*

**Trademark Opposition Procedure:** A revision to the Intellectual Property Law now imposes a time limit for trademark opposition filings. Trademark opposition is a legal procedure that allows any third party to file an opposition against a trademark registration within a non-extendable period of five months from the date the trademark application is published in the Industrial Property Gazette. VNIPO will review and assess evidence and consider arguments provided by the parties before issuing a notice of resolution to the trademark opposition. It is important to note that if the grounds for opposition relate to trademark registration rights, VNIPO will send a notice requesting the opposing party to file a civil lawsuit in court within the specified timeframe.

**Third-Party Opinion:** Unlike the opposition procedure mentioned above, any third party can submit opinions opposing a trademark from the date the trademark application is published in the Industrial Property Gazette until the date that VNIPO issues the protection certificate.

VNIPO will only consider the third-party opinion as reference information for the examination process of the opposed trademark application. Therefore, third parties submitting opinions will generally not receive any notifications from VNIPO, including the results of the examination of the content of the opposed trademark application.

## Copyright and Related Rights

The Vietnamese government has underscored its commitment to copyright protection through the issuance of the Copyright Decree, which introduces comprehensive measures for implementing the Law on Intellectual Property, specifically focusing on copyright and related rights. This new Decree brings significant changes, updating definitions of copyrightable works, providing flexibility in co-authorship and co-ownership arrangements, outlining exceptions to infringement, granting self-protection rights to presumed authors and copyright holders, and specifying obligations for Internet Service Providers. With these progressive updates, the decree represents a substantial enhancement of copyright protection in Vietnam.

*Legislation –  
Copyright*

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## *What's in store for 2024*

In the foreseeable future, Vietnam is poised to fortify its safeguarding of IP, particularly in the realm of patent. Building upon the regulatory framework introduced in 2023, there is an expectation of continuous refinement to enhance transparency in the application process, reinforcing the nation's dedication to global IP protection.

With the rapid rise of AI and the adoption of AI solutions in the country, it is increasingly apparent that IP law in Vietnam will have to evolve to address the challenges and risks posed by the use of AI. It will thus be worth observing the direction taken by the government in this regard, particularly in the context of IP.

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## Artificial Intelligence

Vietnam is experiencing a robust surge in the application and development of AI technology, recognising its potential contribution to economic and social development. Sectors like banking, healthcare, education, and public services are actively looking to integrate AI to enhance business models and customer experiences, often developed by local tech companies. Despite being 55th globally in the AI readiness index, Vietnam is poised to catch up with regional leaders.

*Technology –  
Artificial  
Intelligence*

The Intellectual Property law in Vietnam, while significantly advanced, is currently evolving to address the dynamic realm of AI. This presents an optimistic opportunity for the country to proactively shape its legal framework to accommodate the rapidly evolving AI landscape. The absence of detailed AI regulations in the current Intellectual Property law will require the adoption of a forward-looking approach to ensure new legal changes and approaches align with technological advancements, fostering an environment conducive to innovation and technological progress.

## Filling the Gaps in the Law

While Vietnam's IP Law system aligns relatively well with global standards in terms of law promulgation, a notable challenge persists. The regulations for the undertaking of appraisals (such as Guidelines for the substantive examination of Trademarks, Patents, Industrial Designs), essential for Examiners to consistently apply the law, are incomplete. This hinders the effective and uniform application of IP law.

Furthermore, the enforcement of IP rights faces significant challenges, with a low level of implementation. Awareness of IP rights and their enforcement amongst the public and businesses remains limited, posing a major obstacle to cultivating an IP-efficient economy, and thus demanding prioritised attention for improvement. Addressing these issues comprehensively is crucial to fortifying the IP landscape in Vietnam.

*Legislation –  
Intellectual  
Property*

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