



Intellectual property includes more than just technology-related inventions – such as new products or processes, technical know-how, and expertise – it also includes trade marks, designs, works of authorship, such as manuals, catalogues or computer programs, and in some cases sounds, smells and other attributes that can differentiate your business from your competitors, signify its reputation, and attract customer goodwill.

Identifying your IP assets can help you explore the best ways of protecting and valuating such assets. Useful preliminary questions include the following.

- Do you need a brand to commercialise your products/services?
- Do you produce content that requires protection?
- Do you have confidential information that you or your employees need to protect?
- Do you have a new/unique technology/design you would like to secure ownership of?
- Do you intend to license/franchise your products/services?

If the answer to any of the questions above is “yes”, then you need to identify which IP assets you can protect. There are five principal types of intellectual property assets that can be protected:

- Patents protect new and non-obvious inventions; usually sought and granted for new products or new processes that meet particular requirements.
- Designs protect the new shape or pattern of a product.
- Trade marks are used to identify and distinguish a company's product or services from those of its competitors'.
- Copyrights protect creative works of expression, such as literary, software, photographic, musical, artistic and architectural works.
- Trade secrets are never disclosed to unauthorised third parties as publication would reveal the secret, thereby destroying its value.

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### 3. Link IP strategy to business objectives

The next step is to precisely identify which of these IP assets will be essential to the achievement of your business objectives.

Copyright protection, for example, will be of utmost importance for a software developer, whereas trade mark protection is likely to be one of the main IP assets for any company producing/selling consumer products. IP assets can both protect and grow businesses in many ways. In most countries [intellectual property rights can support the execution of business objectives because exclusive rights are granted to the owner, thereby allowing for additional growth such as the possibility to license or franchise IP rights to other parties.](#)

On the contrary, failure to envisage a proper IP strategy can prove costly or seriously undermine business goals. Frequently, companies that bring new products that incorporate a lot of investment and IP value (such as research and development or new technical innovations) into new territories may find themselves being almost immediately copied, and with no possibility of protection, if they have not registered their rights.

Adopting clear business goals can greatly help develop a supporting IP strategy. A sound and comprehensive IP strategy should have at least the three following aspects.

- **A defensive strategy (“shield”)**, the purpose of which is for the IP owner to obtain exclusive rights and enforce these rights in case of infringement. The risks related to the development of new technologies, brands or product lines can be reduced by effective IP registrations followed by comprehensive monitoring of the market in order to detect potential infringements (counterfeit products; trade mark squatting, technology theft) at an earlier stage and enforce your IP rights at the right time.
- **An offensive strategy (“sword”)**, the purpose of which is for the IP owner to gain a significant competitive advantage over identified competitors. The idea behind the offensive IP strategy is develop and register IP assets (technologies, patents, designs, etc.) in order to anticipate and block competitors' market activities in certain fields.
- **A commercialisation of IP assets strategy**, the purpose of which is for the IP owner to benefit financially from the selling, licensing, or franchising of its IP assets. In other words, commercialisation is the process of bringing IP to the market in order for it to be exploited in return of business profits and growth. Financial success of any IP commercialisation will certainly depend on the choice of the most appropriate commercial tool (licensing, franchising or selling).

Of course, a mix of these strategies tailored to each individual business's protection needs and goals is the most preferable. A sound IP strategy should support the business goals and objectives of the company and provide a return on investment and/or a strategic advantage.

### 4. Prioritise protection needs

Along with strategy comes the need for setting priorities. Assets that generate or are likely to generate the most revenue or draw the most exposure should be given the highest priority. On the other hand, lesser-known or less profitable assets can be afforded lower priority.

Various factors need to be taken into consideration as well, including the following:

- The level of available resources/budget (both short term and longer term).
- The territories where protection is needed.

- The expected sales/turnover.
- The risk of adverse costs for non-protection of IP assets (whether counterfeiting or competitors' ability to legally copy/imitate).
- The expected return on investment (in terms of valuation of IP assets/licensing/ franchising/assignment opportunities etc.).

When setting your priorities based on the recommendations above, you should also [consider the cost of IP protection](#). While protecting IP assets may not be the costliest investment for the majority of businesses, budget constraints need to be well understood. Patent protection, for example, usually requires maintenance fees or annuities to be paid by the patentee. International protection costs for some IP assets (such as designs, patents or even marks) can quickly become a significant expense for small businesses.

It is also important to [evaluate the expected life-span of IP assets](#) when determining what priority to assign to them. Assets that are expected to have a long life span (such as industrial machines or equipment) should be given priority. On the contrary, the print materials for a one-time promotion are likely not worthy of protection since the legal process to obtain protection may take longer than the offering itself.

## 5. Assess vulnerability

Prior to entering any new market it is highly recommended that a vulnerability assessment be conducted. Such an assessment should include, at a minimum, the verification of availability and freedom to operate, and the anticipation of risks and potential enforcement issues:

### Verification of availability and freedom to operate.

[It is absolutely necessary to verify the availability of intellectual property rights before engaging in commercial or trade use of IP rights](#). Trade mark availability searches can help avoid the unintentional infringement of someone else's mark and avoid marketing a brand that cannot be protected. The same applies to technology where freedom to operate studies can help determine whether patents have been filed or granted in a particular territory. Patent or design patent searches in local patent databases can help determine strategy, monitor your competitors, and reveal business opportunities.

### Anticipate risks and potential enforcement issues.

Although most countries have now adopted IP laws to protect IP rights, some countries are notorious for their lack of key legislation and/or enforcement capabilities. Being able to assess and, whenever possible, mitigate these risks at an early stage can provide a decisive advantage.

[Preliminary assessment of vulnerability does not require a significant investment but can yield extremely valuable information that can be inputted into the business and IP strategies](#). Many businesses realise the importance of these preventive steps too late -- after losses have been incurred or opportunities missed. Often, a business's lack of anticipation of protection needs is more to blame than the loopholes in a local IP protection system. This is particularly applicable to local businesses in developing countries

where awareness of IP protection remains low.

## 6. Maintain clarity of ownership rights

IP ownership rights must be clarified and secured. Chances are that many people - whether founders, actual or potential business partners, as well as past, present and future employees - will have knowledge of or produce work that touches on IP. The following three recommendations apply to virtually all businesses.

### Formalise agreements amongst founders.

Even if a business has a long history elsewhere, entry into a new market is often comparable to starting a new company. This is true whether you intend to enter into a distribution agreement with a new partner or if you intend to establish a local company in a new territory with local shareholders. [It is crucial that shareholder agreements clearly spell out which founders or shareholders own or co-own the company's IP](#).

### Formalise agreements with business partners.

[Adding clear IP ownership provisions to applicable distribution, manufacture, purchase, joint venture, and partnerships agreements is absolutely essential](#). Companies entering new markets also usually require local partners for distribution or other type of commercial activity. A clear agreement between everyone involved will clarify who owns what, especially when more than one party may bring IP. It is also important to clarify which parties will enforce IP rights in the local territory and which parties will have what IP ownership should the company be dissolved.

### Formalise agreements with employees and suppliers.

Equally important is the need to [establish clear rules of ownership of IP with employees and suppliers](#) to prevent such other parties from making claims of ownership regarding a company's intellectual property. Employment agreements should include clauses that state that the employee will not make claims of ownership regarding IP used or created during the course of employment, as is applicable for the job. Supply, production, and distribution agreements must likewise explicitly restrict the other party from misrepresenting or making claims of IP ownership.



## 7. Preserve opportunities to protect IP

In addition to the above recommendations, IP owners must ensure that they do the following.

### **Date, document, and archive their creations.**

These records can serve as proof of creation and ownership in disputes.

### **Ensure that they control the disclosure of their IP through Confidentiality or Non-Disclosure Agreements (NDAs).**

In addition to pro-actively documenting the other party's acknowledgement of IP ownership, NDAs can provide the grounds for legal action in cases of breach of confidentiality. Additionally, the appropriate agreement can ensure that a patent can be filed even though the invention was previously disclosed.

## 8. Think about online protection

Online protection, especially of domain names and social media identities, merits particular attention. The Internet is increasingly becoming a key business and marketing platform for almost all types of businesses. It is also an ideal platform for infringers to sell counterfeit products and commit fraud in an almost anonymous way. **Before entering a new market it is recommended that business owners protect local domain names as well as social media identities** (such as Twitter®, Facebook®, LinkedIn® but also local social media sites). Since these identities are registered on a first come, first served basis, protection of these can help prevent cybersquatting and later domain name disputes. Attention should also be given to B2B (business-to-business transactions), B2C (business-to-consumer transactions) and online shop websites where an increasing share of counterfeit products is offered for sale.

*For further information, visit our website and download the [ASEAN IPR SME Helpdesk Guide to Protection of Online IPR in Southeast Asia](#).*

## 9. Know the local rules

The most common mistake made by companies entering a new market is to assume, without verification, that local rules will be, to some degree, identical to those of the business's home country or the target market's neighbouring countries. This often occurs in situations where the IP strategy is decided abroad or based on IP rights created outside a new market. **Knowledge of local rules and the extent to which local rules can be applied can maximise effectiveness of IP protection and avoid future problems.**

It is essential that any business entering a new market knows the **scope of IP protection** it can expect, as well as the shortcomings of local legislation. For example, some countries have not yet adopted comprehensive IP laws or properly trained enforcement authorities to perform their duties. In other countries the letter of the law may provide comprehensive protection but officials and authorities lack sufficient training or funding to enforce the law. Not infrequently, there may be notable discrepancies between the laws as it is written and as it is enforced. This is especially true in countries where IP laws are still relatively new and counterfeit and other IP

rights violations are widespread. Therefore, it is recommended to monitor new pieces of IP legislation and international treaties and how new protections or court decisions may affect IP strategies. In case you are unsure about how to do so, it may be useful to contact the chambers of commerce of European countries in the region, or seek advice of a local legal practitioner. Where you have doubt about a country's capability to enforce rights, it is important to put in place internal measures – such as restricting access to confidential information or maintaining secrecy over key technologies – to protect your intellectual property.

## 10. Adapt to local rules

Adapt to local rules and be able to adopt a flexible approach. Keep in mind that the level of IP protection available and the procedures for enforcement greatly varies country-by-country across Southeast Asia. For example, in certain jurisdictions a petty patent can be granted quickly, allowing prompt enforcement, as opposed to a patent application that may not be granted for many years.

In another example, **local mediation or arbitration may be preferable to formal litigation**, an approach sometimes difficult for the Plaintiff to accept, yet often providing better and quicker results. To this extent, the [WIPO \(World Intellectual Property Organisation\) Arbitration and Mediation Center](#), based in Singapore and established in 2010, is a neutral, international and non-profit dispute resolution provider that offers time- and cost-efficient alternative dispute resolution (ADR) options. The Center provides mediation, arbitration, expedited arbitration, and expert determination that allow companies to efficiently settle their domestic or cross-border IP and technology disputes out of court. The WIPO Center also offers domain name dispute resolution services. Other organisations also exist locally, e.g. BANI in Indonesia, Thai Chamber of Commerce or Alternative Dispute Resolution Office in Thailand, MMC in Malaysia, SMC or SIAC in Singapore). Their contacts are usually known to local lawyers.

## 11. Protect IP rights

The law recognises certain types of IP assets and affords its owners intellectual property rights such as trade marks, patents, designs, copyrights, trade secrets, domain names, and geographical indications.

Protecting IPRs through the filing of the appropriate IP applications with local Intellectual Property Offices provides significant benefits. **Registered rights are always easier to enforce than non-registered rights.**

### **Registering trade marks**

The benefits of trade mark registrations include the following:

- Exclusive rights for the owner to use and exploit (including through assignment and licensing) the registered mark.
- The enforceability of trade mark rights.
- Protection against the registration of similar or identical trade marks.
- Use of the ® sign next to registered trade mark to discourage infringement.

- Increased business value and protection of business reputation.

It is recommended that applicants consider and/or undertake the following prior to submitting a trade mark application. Opt for a distinctive, rather than a descriptive or suggestive trade mark, to increase the likelihood that the trade mark registration application will be accepted.

- Check databases for trade mark availability prior to filing an application.
- Clearly identify all products and services to be associated with the trade mark; aim to be reasonably over-inclusive rather than under-inclusive.
- Monitor published trade mark applications so that opposition to similar trade marks can be timely filed.
- Use the mark to avoid the risk of cancellation.

For further information, visit our website and download the [ASEAN IPR SME Helpdesk Guide to Trade Mark Protection in Southeast Asia](#).

#### Registering patents and/or design rights

The benefits of registered patents/design rights include the following:

- Exclusive rights for its owner to prevent others from making, using, selling, or distributing the patented invention or design without the patent owner's permission.
- The enforceability of patent and design rights.
- Increased business value.

It is recommended that applicants consider and/or undertake the following prior to submitting a patent or design application. Identify registrable subject matter and evaluate the need for IP protection.

- Maintain secrecy, including through confidentiality agreements, should disclosure be necessary (eg. to secure funding) before filing the patent/design application.
- Remember that most countries operate an “absolute novelty” and “first-to-file” IP system. The confidentiality of a new invention should be maintained as long as possible until a patent/design application date has been obtained.
- Check patent/design databases for prior art and monitor your competitors' activities.
- Check the registrability of your patent/design with a local IP agent/attorney.

For further information, visit our website and download the [ASEAN IPR SME Helpdesk Guide to Patent Protection in Southeast Asia](#).



## 12. Do not forget copyright

Copyright is an automatic right that arises the moment a work is created, meaning that some rights may exist automatically without the need to register them formally. *Although copyright recordation with local IP offices and copyright notices are usually optional, they are recommended.* An officially established copyright record and ownership claim can deter other parties from copying the copyrighted work. It is recommended that copyright notices, or simply the copyright symbol (©) with year of creation or first publication, be added on manuals, guides, website contents, important corporate documents or advertising material.

Copyright protection extends to a wide range of physical expressions of ideas. These commonly include literary works (advertisements, books, magazines, newspapers, website content etc.), computer software, musical works, dramatic works (choreography, dancing, acting etc.), artistic works (paintings, drawings, illustrations, sculptures, lithography, photography, architectural works, and other forms of applied arts) and audio-visual works.

The benefits of copyright registrations include the following:

- Helps the author to establish a record date and a proof of work's ownership, which can be used to support or oppose copyright challenges, as applicable.
- Copyright registration also makes it easier to enforce rights through civil and criminal penalties against an infringer.

For further information, visit our website and download the [ASEAN IPR SME Helpdesk Guide to Copyright Protection in Southeast Asia](#).

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## 13. Protect trade secrets

Although trade secret protection usually does not require registration, it is important to note that for a company trade secret to be eligible for legal protection several conditions must be met. The most common conditions are the following:

- The information must not be publicly known.
- The information must possess a commercial value derived from its secrecy.
- The controller of the information must have taken appropriate measures to maintain its secrecy.

It is recommended that owners of trade secrets consider the following:

- Carefully weigh whether or not patent protection is preferable to trade secret protection – this typically means assessing how probable it is that a third party could recreate or reverse engineer the material that is the subject of the trade secret; if it is likely, then registering the innovation/technology as a patent is preferable.
- Always maintain secrecy of a trade secret by means of

confidentiality agreements and confidentiality provisions in agreements with parties – such as employees, suppliers, and contractors – that may learn of the trade secret.

- Set up a clear policy within the company to avoid unintended disclosure.
- Mark as confidential all documents that should not be disclosed outside the company.

For further information, visit our website and download the [ASEAN IPR SME Helpdesk Guide on Protecting your Trade Secrets in Southeast Asia](#).

## 14. Establish key contracts

For the majority of businesses, the protection of IP rights begins in the private domain, within the business itself. [Business owners can protect IP assets, mitigate potential losses, and avoid legal problems by adequately and properly protecting IP rights through a wide range of agreements and contractual provisions.](#)

Prior or in parallel to any IP registration strategy, it is recommended that a business ensures that IP assets are well secured within the business itself. Employment agreements, confidentiality, non-disclosure agreements, and technology transfer agreements are particularly relevant in this regard.

- **Confidentiality and assignment clauses in employment agreements** can ensure that employees are contractually bound to confidentiality and that creations made by employees in the course of business are duly assigned to the employer, respectively. Such clauses protect the company's existing and future IP that an employee may be exposed to and ensures that the company maintains IP rights to an employee's work product created for the company.

- **Confidentiality/Non-Disclosure Agreements (NDAs)** are legally binding agreements between a discloser, and a (or several) recipient(s) of confidential information. Confidentiality Agreements can help protecting information that has a special and unique value and information critical to preserving the patentability of new intellectual property.

Businesses will usually enter into confidentiality agreements with their employees, their contractors, business partners and their clients, in particular when clients are bound by specific license or terms of use of a process, product or service.

### - Technology Transfer/IP Agreements

Other types of IP Agreements include material transfer agreements, IP license or assignment agreements, and strategic IP or joint-venture agreements, such as co-development agreements or co-marketing agreements. The main purposes of these agreements is to clearly establish who should own the intellectual property and, where applicable, put a price on intangible assets (purchase price in case of assignment, license fees or royalties for license or franchise agreements) or evaluate each party's IP contributions (for strategic alliances, joint ventures, co-research and co-development agreements).

For further information, visit our website and download the [ASEAN IPR SME Helpdesk Guide to Using Contracts to Protect your Intellectual Property](#).

## 15. Spend strategically

The protection of IP rights should be made according to a clear strategy and a pre-defined budget. It is important to build IP protection step-by-step and to explore ways to save protection costs, such as by using international or regional systems of IP protection. Some IP rights, such as copyrights, can be recorded with minimal costs. Other rights, such as patents, can be quite expensive to protect and should be reserved for highly strategic markets and/or products.

[Ensure you have a clear understanding of costs involved and that your IP counsel is well aware of how much you can afford to spend on intellectual property.](#) While overprotection is usually not a risk, allocating resources for protection needs to be done in proportion to other investments and relative to the risk IPR infringements pose to the business. It is also important to ensure that your company can sustain the protection costs (eg. annuities or maintenance fees for patents) or enforcement costs so that the IP budget spent on filing new IP rights does not deprive the existing IP portfolio from necessary protection.

## 16. Investigate potential for licensing of IP

Businesses, particularly SMEs, tend to underestimate the potential of licensing their IP in new markets/territories. [Licensing is one of the cheapest and least risky ways to exploit IP and can provide SMEs with a powerful presence in a local market often unknown to them.](#) Prior to moving into any licensing or franchising deal, it is crucial to choose your local business partner with caution (a comprehensive preceding due diligence is a must), have a license or franchise agreement in place and to check its local enforceability.

## 17. Seek professional guidance

The services of local, experienced IP counsel who has good contacts with pertinent government agencies is invaluable. Local counsel should be able to provide legal opinions, recommendations, vulnerability audits, freedom to operate studies, and litigation strategies that would allow IP rights holders to make informed decisions. It is crucial that strategies be designed with a clear understanding of how far local laws can be interpreted and practically enforced.

For additional advice on finding appropriate legal guidance, visit our website and download the ASEAN IPR SME Helpdesk guide ['Finding the Right Lawyer'](#).

## 18. Be prepared to enforce your rights

Entering a new market and protecting IPRs sometimes means being ready to enforce or defend rights in order to ensure that business objectives are met.

The following are recommendations prior to any enforcement action.

- Focus on business needs before legal outcomes.
- Review options and opt for procedures that best serve business interests. In certain countries, criminal actions are more effective at ending infringement because civil actions are lengthy and entail only negligible fines.
- Pursue legal action with a clear objective and only if you are committed to concluding the action.
- Be realistic about expectations. For example, a favourable verdict may be difficult to enforce.
- Seek professional advice and an honest appraisal of the situation.
- Conduct market survey to evaluate the current or possible impact of enforcement.
- Choose targets with multiplier effects (manufacturer/warehouse/wholesaler/retailer) as opposed to insignificant parties (street vendors).
- Spend wisely, especially for civil cases (success fees etc.).
- Team up with other IP right holders, if possible, to reduce costs.
- Build connections with local enforcement authorities.

## 19. Build awareness

**Build awareness by growing an IP culture within your company.**

Companies can emphasise the importance of IP in their business in several ways. For example, companies can highlight the importance of IPRs in their dealings with local distributors and licensees, by monitoring the local market, and by implementing and controlling confidentiality within the company. Communication outside of the immediate business circle is also essential to building IP awareness. Copyright notices, trade mark notifications, conferences, organised trainings and seminars, especially for enforcement authorities, are just a few examples of what companies can do to build IPR awareness, especially about their IP assets. Annual training and workshops for customs and police officers are powerful tools for spreading knowledge about differences between counterfeit and genuine goods, and keeps authorities aware of your IP issues. These programmes also help educate authorities about the damage that counterfeiting causes to the national image and international trade.

## 20. Join forces

The final recommendation is that IP rights holders should consider joining forces and seek the support of professional organisations, trade associations, or chambers of commerce. Not only can participation in these forums help companies learn about best practices, they also offer the possibility for these companies to directly address their issues to the relevant authorities and/or comment on proposed pieces of legislation. In some cases, joint enforcement actions can also help reduce costs for individual brand or copyright owners.

Southeast Asia has many very active European and bilateral chambers of commerce and business organisations, as well as trade promotion agencies from certain EU Member States.

These are always good starting points when thinking about doing business in Southeast Asia, or any other new markets.



## 21. Related links

ASEAN IPR SME Helpdesk Website and Publications  
 ASEAN IPR SME Helpdesk website – <http://www.asean-iprhelpdesk.eu>

IP Country Factsheets – <http://www.asean-iprhelpdesk.eu/?q=en/country-factsheets>

Confidential Enquiry Service – Email us now at [question@asean-iprhelpdesk.eu](mailto:question@asean-iprhelpdesk.eu)

IPR Helpdesk Blog – for news, information and topical blog postings on IP in Southeast Asia and China – <http://www.youripinsider.eu>

ASEAN IPR SME Helpdesk business guides on various subjects, including:

- ‘Technology Transfer to Southeast Asia’
- ‘Top 20 IP Considerations When Entering a New Market’
- ‘Protecting your IP at Trade Fairs in Southeast Asia’
- ‘Protecting your Online IPR in Southeast Asia’
- ‘Protecting your Trade Mark in Southeast Asia’
- ‘Protecting your Patent in Southeast Asia’
- ‘Protecting your Trade Secrets in Southeast Asia’ and
- ‘Protecting your Copyright in Southeast Asia’

All available to download at <http://www.asean-iprhelpdesk.eu/?q=en/helpdesk-guides>

Other IPR Helpdesks and Related Services

China IPR SME Helpdesk – <http://www.china-iprhelpdesk.eu/>

Mercosur IPR SME Helpdesk – <http://www.mercosur-iprhelpdesk.eu/>

European IPR Helpdesk – <https://www.iprhelpdesk.eu/>

WIPO Arbitration and Mediation Centre – <http://www.wipo.int/amc/en/center/background.html>

ASEAN IP Portal – <http://www.aseanip.org/>

**For more information on the protection of trade secrets in any ASEAN country, please contact our free confidential helpline on [question@asean-iprhelpdesk.eu](mailto:question@asean-iprhelpdesk.eu) or +62 21 571 1810.**



# ASEAN IPR SME HELPDESK



The ASEAN IPR SME Helpdesk provides free, confidential, business-focused advice, relating to ASEAN IPR to European Small and Medium Enterprises (SMEs).

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