

Role of IPRs for the social and economic development of the APEC region

Intellectual property comes in many forms. They can be in the form of books, music, designs, processes, marks, geographical indications or even data or informations used in industry or commerce. There is a trend that the scope and form of intellectual property will be further expanded in the future.

Most objects involve in day to day life such as furnitures, stationary, kitchenette, automobiles, computers, telecommunication equipments, etc. did not exist thousands of years ago. They are not natural objects but are made by man, the fruits of intellectual property.

Intellectual property facilitates the well being of human life and in many cases help human being lives longer. Intellectual property stirs interests among people concerned. It provides income and causes movement of all kinds of resources and therefore creates industry and commerce. The intellectual property has a very important role both in economic and social development of mankind.

Intellectual property right has economical value like any other property. Economic return is the main factor in motivating further development of intellectual property. Laws are required to protect the intellectual property right from any illegal infringement. The holder of the intellectual property right is granted the exclusive right to exploit his intellectual property either by self-exploiting or by licensing to others for royalty. Due to the monopolistic characters of the intellectual property right, utilization of intellectual property right is limited under certain conditions as specified by law.

Some has the opinion that intellectual property right is one of the fundamental rights of human being. They believe that the intellectual property right is a part of human right.

Thai first intellectual property law was promulgated in A.D.1892. (Wachirayan Announcement : Ror.Sor.III-B.E.2435). It was aimed at literacy protection. Currently Thailand has 6 intellectual property laws. They are

1. Copyright and related rights under the Copyright Act, B.E.2537 (A.D.1994)
2. Trademarks, Certification Marks, Service Marks, Group Marks under the Trade Mark Act, B.E.2534 (A.D.1991), as amended by the Trademark Act (No.2), B.E.2543 (A.D.2000)
3. Patents and Product Designs under the Patent Act, B.E.2522 (A.D.1979), as amended by the Patent Act (No.2), B.E.2535 (A.D.1992) and as amended by the Patent Act (No.3), B.E.2542 (A.D.1999)
4. Layout Designs (Topographies) of Integrated Circuits under the Protection of Layout-Designs of Integrated Circuit Act, B.E.2543 (A.D.2000)
5. Protection of Undisclosed Informations under the Trade Secret Act, B.E.2545 (A.D.2002)
6. Protection of Plant Variety under the Plant Variety Protection Act, B.E.2542 (A.D.1999)

Thailand also is a party to several international treaties and bilateral agreements, such as,

1. Agreement Establishing the World Trade Organization
2. Agreement on Trade – Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods. (Trips)

3. Convention Establishing the World Intellectual Property Organization (WIPO : World Intellectual Property Organization)
4. Berne Convention, of September 9, 1886, for the Protection of Literary and Artistic Works

Thailand realizes the important role of Intellectual property in social and economic development. Many measures designed to promote research and development are currently offered. Special grants and tax incentives are part of the measures. Thai government is also actively promoting registration of intellectual property. These measures are well accepted and received well cooperation from private sector and private organization such as The Federation of Thai Industries. The record of intellectual property right registration in Thailand appeared in the Attachment 1 and 2.

Thailand faces problems regarding intellectual property right infringements like most developing and less developed countries. However, Thailand does not ignore this problem and try to strictly enforce the law. In A.D.1996, the Intellectual Property and International Trade Court has been established. It is a specialized court with its own special procedures which are differ from other regular courts in order to provide efficient and rapid proceeding.

For the suppression and protection against intellectual property right infringement, Thai government has stressed its policy to force the suppression of copyright on intellectual property right infringement. On December 20, 2002, thirteen Thai government sectors signed the Memorandum of Understanding on the Cooperation of the Relevant Government Agencies on the Enforcement of Intellectual Property Rights (MOU). The 13 government agencies are

- (1) The Royal Thai Police

- (2) The Office of Consumer Protection Board
- (3) The Revenue Department
- (4) The Customs Department
- (5) The Excise Department
- (6) The Department of Intellectual Property
- (7) The Special Investigation Department
- (8) The Department of Business Development
- (9) The Department of Foreign Trade
- (10) The Department of Internal Trade
- (11) The Department of Industrial Works
- (12) The Metropolitan Electricity Authority
- (13) The Provincial Electricity Authority

This MOU provides the cooperation in relation to the implementation of intellectual property right infringement suppression, by ordering relevant government sectors to strictly implement all laws with regard to intellectual property rights' protection. The responsibilities are shared among thirteen government sectors by co-operating and exchanging their informations.

The record of arrests and prosecutions in relation to intellectual property right infringement appears in the Attachment 3.

Whatever comes with benefits always comes with costs and so does intellectual property right. Protection of intellectual property right against any illegal infringement is necessary in order to promote the creation of new ideas or inventions. To grant monopolistic right to intellectual property right holders in some cases also may alienate certain people from sharing the benefits of those ideas or inventions.

Take the medicine for AIDS treatment as example, it certainly will take a great big amount of resources before

such medicine will be invented. If those newly invented medicines were to be sold at a very high price, then the poor AIDS patients would not be able to afford for those medicines and eventually they would die without the opportunity to share the result of the great invention.

Software computer programs are another example. To promote further development, software computer programs must be protected against illegal infringement. Then what should be the fair market price of a software computer program. A software computer program sold in U.S. at a price of US\$50 should be sold at what price in Thailand. Should it be sold at the same price of Bahts 2,000 (if the exchange rate is US\$1 equal to Baht 40). Or it should be sold at Baht 7,000 which is the price that Thai consumer have to accept anyway because there are no other substitutable goods. Or should it be sold at the price of Baht 1,200 if the standard of living of the two countries are to be taken into consideration.

In the era of internet, informations can reach every corner of the world under a wink of an eye. To surf the internet, one needs computer, software computer programs and other telecommunication systems which these equipments are all intellectual property right related. The price of these equipments can determine the fate of the people all around the world.

It was recently reported that companies and organizations around the world are in a race to patent genes of the SARS virus and even the virus itself. It was also reported that the US Center for Disease Control has applied for a patent on the SARS virus and its entire genetic content not with a profit motive but so that researchers worldwide will be free to search for drugs or vaccines against the virus. The case of SARS demonstrates that the global policy on

genetic patenting is needed in order to regulate the right to use certain knowledges for the benefit of mankind as a whole.

Under the fierce competition environment in industry and commerce as we are to-day, technology are developed in a pace so rapidly that it is impossible for developing and less developed countries to catch up with. New technology such as NANO TECHNOLOGY or GMO (Genetically Modified Organisms) will cause the gap of social and economic development among the developed countries and the developing and less developed countries to be widen even further.

Education is the most concerned issue. Education systems of developed countries change drastically lately because of internet. People can now study or do research or even work at home through internet system. But there are people in another half of the world still have to rely on the old fashion way of study. They still have to rely on paper, pencils and printed text books. These people are too poor to afford for computer systems and their government has no budget to install any new technology telecommunication systems. Unequal opportunity of education will certainly lead to unequal ability to develop socially and economicly.

How to promote and to protect intellectual property right by not causing the gaps of social and economic development among people around the world to be widen further requires good management systems of intellectual property right. How to balance the costs and benefits of intellectual property right is not a question of any one government alone. But it is a challenge to every government of every country in the world to see that intellectual property right will fairly benefit the mankind as a whole.

The world will be a better place if the balance of costs and benefits of intellectual property right can be kept in check and fairness are given to every one in the world.

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