

Monthly Report of December 2005

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THAILAND

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1. 'Satisfactory progress' made in latest session

(from Bangkok Post Newspaper, Business Section, Page B3, Thailand, 1 December 2005)

Satisfactory progress was made in the latest session of trade talks between Thailand and the United States, according to Michael Delaney, the counselor for economic affairs at the US Embassy in Bangkok. Trade negotiators from both sides put forth important issues including those dealing with the financial sector, rules of origin, customs, environment, labour, intellectual property and agricultural goods.

Mr Delaney said issues had not yet been "completely settled", but that progress was made in the text for rules of origin and agriculture. The next round of talks will be held in Chiang Mai, Thailand on January 9-13. Leaders from both countries want to conclude the negotiations by the middle of next year.

To meet the deadline, trade negotiators plan to meet more frequently to come to an agreement on sensitive issues such as the financial and services sector, telecommunications, intellectual property protection and environment and labour.

2. Thailand, China to sign action plan on IP

*(from The Nation Newspaper, Business Section, Page 2B, Thailand, 5 December 2005
Vietnam News Agency Bulletin, 5 December 2005)*

Thailand and China will soon sign their first-ever action plan for intellectual property cooperation in a bid to create a mutual-recognition arrangement and crack down on copyright violations between the two countries. The action plan would be inked during Deputy Commerce Minister Preecha Laohapongchana's upcoming visit to China scheduled from December 8-10, Director General of the Intellectual Property Department, Kanissorn Navanugraha.

Both sides intend to focus on mutual recognition and collaboration on various aspects of intellectual property, including trademarks, geographical indications, patents and copyrights. The two countries will also join hands in fighting counterfeit goods.

3. Piracy is a brake on IT industry

*(from The Nation Newspaper, Business Section, Page 1B & 4B, Thailand, 10 December 2005
Krung Thep Thurakit Newspaper, Krung Thep IT Section, Page 5, Thailand, 10 December 2005)*

The IT business in Thailand could reach US\$4.5 billion by 2009 if the country reduced software piracy by 10 percentage points to 69 per cent over the period, according to research results released. The study, sponsored by the Business Software Alliance (BSA), was conducted by International Data Corp (IDC) in 70 countries that accounted for 99 per cent of total IT spending worldwide.

During the five-year period, Thailand could add US\$1.9 billion to its economy by creating 4,700 high-wage, hi-tech jobs that would boost industry revenues by US\$1 billion and tax collections by US\$74 million.

Between 2002 and 2004, demand for software grew 15 per cent, helping to open up 8,000 IT jobs. Contributing to the growth were hardware and IT services. Thus, if software piracy is tackled, it will benefit everybody.

The five types of software problems are organisation-end-user piracy, hard-disk loading, retail piracy, software counterfeiting and Internet piracy.

4. UN expert urges 'arts inventory'

(from Bangkok Post Newspaper, Home News Section, Page 6, Thailand, 15 December 2005)

A United Nations' expert on intellectual property urged countries in the region to prepare inventories on traditional arts to minimise disputes rising from conflicting claims regarding origin.

"I would say an inventory would get rid of such conflicts. It would describe a feature regarding cultural heritage precisely. Then countries should form a regional panel to oversee the process," Wend Wendland, chief of the Traditional Creativity and Cultural Expression Section under the World Intellectual Property Organisation (WIPO), told delegates at a sub-regional meeting on intangible cultural heritage in Bangkok.

Mr Wendland also encouraged countries to seek copyrights for traditional products to safeguard them amid an increase in piracy of traditional arts and knowledge, including traditional music and medicine. Mr Wendland spoke in response to the issue of criteria for claims between two countries in conflict over a similar point of culture or heritage. Such an issue can occur when two neighbouring countries sharing similar cultural practices argue over where something originated.

Thai shadow puppets, known as nang yai, for example, are similar to what is called sbek thom in Khmer. Several Thai musical instruments are also found in similar forms in Laos and Cambodia.

Once Unesco established the Convention on the Protection and Promotion of the Diversity of Cultural Expression in 2003, countries began claiming source of origin in traditional arts, including performing arts, woodcraft, traditional dance and musical instruments.

About 80 items on the Unesco list have attracted severe criticism. The keris, a distinctive, asymmetrical dagger in Malaysia and Indonesia, but it is also found in southern Thailand. Unesco listed this item as Indonesian earlier this year.

However, acknowledging cultural similarities, the United Nations Educational, Scientific and Cultural Organisation (Unesco) does allow for joint ownership of some areas of culture or heritage. Examples of where countries share ownership include Shashmaqom music, by Tajikistan and Uzbekistan, and celebrations in song and dance in the Baltic states.

Noriko Aikawa, an adviser to Unesco, admits there is a lack of clear-cut guidelines for claiming origin of culture and heritage. The convention is aiming to promote conservation and is not meant to provide competitiveness or a hierarchy, she said.

Meanwhile, the Office of the National Cultural Committee is seeking an 80 million baht budget for developing an inventory of "intangible cultural heritage".

ONCC secretary-general Prisna Pongtadsirikul said the office had compiled a list of over 360 items, including traditional performing arts, folklore, handicrafts and traditional knowledge, from communities and local artists and it plans to commercialise some. It is hoped the process will make such arts more accessible to new audiences or consumers, she said.

These arts items would also be promoted as materials for use in teaching children about their culture and heritage in schools, she said.

5. Crushing victory

(from Bangkok Post Newspaper, Business Section, Page B2, Thailand, 22 December 2005

The Nation Newspaper, Business Section, Page 4B, Thailand, 22 December 2005

Post Today Newspaper, Business Market Section, Page B2, Thailand, 22 December 2005

Krung Thep Thurakit Newspaper, Industry Section, Page 6, Thailand, 22 December 2005)

Thai officials destroyed more than a million counterfeit items including watches, DVDs and handbags Wednesday as part of its campaign to crack down on piracy. Thailand's street vendors and electronics malls openly sell fake CDs, DVDs, Louis Vuitton bags and Rolex watches, but authorities here occasionally crack down on the trade with publicized ceremonies to destroy counterfeit goods.

Fifteen trucks unloaded cardboard boxes and large trash bags filled with 1.5 million items into an incinerator at the Bang Pu Industrial Estate before an audience of pop stars, police, custom officials and politicians. The goods were valued at THB110 million (US\$2.7 million). Also destroyed were 100,000 items from the Thai Customs Department, including counterfeit car spare parts and confiscated, smuggled cigarettes.

A recent study by the Business Software Alliance found that 70% of software used in Thailand was pirated. The protection of U.S. intellectual property rights has been a key issue in Thai-U.S. talks for a free trade agreement.

PEOPLE'S REPUBLIC OF CHINA

News in December 2005

1. China, Europe to shape future patent cooperation
2. Hong Kong tries to stop fake fashions
3. FBI and China discuss piracy, computer crime
4. Police raid pirate nest near Xiangyang market
5. Japanese clothing retailer wins trademark dispute in China
6. Patent seminar opens
7. Chinese, US jurists help Chinese companies deal with US IPR charges

1. China, Europe to shape future patent cooperation
(from *Industry Updates*, 6 December 2005)

China's top intellectual property watchdog said here Monday that patent cooperation between China and Europe should be aimed at stimulating innovative activities and enhancing bilateral economic and trade relations.

At a symposium organized held in Beijing to mark the 20th anniversary of cooperation between China's State Intellectual Property Office (SIPO) and the European Patent Office (EPO), Tian Lipu, SIPO commissioner, said the two offices have cultivated a good, effective exchange and cooperative relationship in the past two decades.

The future cooperation between the two offices might influence the world patent mechanism, Tian said. Tian also inspired Chinese companies to learn more about the European patent system and apply for more European patents.

The SIPO signed a cooperative agreement with the EPO, including future cooperation in personnel exchange and training, exchange of patent data, joint programs toward future cooperation with Southeast Asian nations, and intellectual property symposia geared to China-based European firms.

2. Hong Kong tries to stop fake fashions
(from *Associated Press Newswires*, 7 December 2005)

The Hong Kong Customs and Excise Department is stepping up efforts against counterfeits in response to an expected influx of tourists coming in town during the World Trade Organization summit on Dec. 13-18 and the holiday season.

"We are anticipating, during this period until the end of the year, normally there will be more tourists and people coming to Hong Kong. So we have to step up our enforcement measures against this counterfeiting activities to suppress their increasing strength," said Samson Chiu, a divisional commander of the intellectual property investigation bureau of the Hong Kong Customs Department.

The objective is to prevent counterfeit vendors from disturbing the tourists, he said.

A special action team of 108 people has been created to step up anti-counterfeit measures for the global summit, Chiu said. The team will continue until after the WTO meeting and will be reviewed afterward. If the counterfeit sales people have been suppressed, the special action team might not be needed in the future, he said.

The piracy fight is serious business for officials in Hong Kong, which calls itself "Asia's World City" -- a cosmopolitan place with a strong rule of law. Such assurances help set Hong Kong apart from cities across the border in mainland China, where counterfeiting is rampant.

Recently two of the world's biggest action movie stars, Arnold Schwarzenegger and Jackie Chan, appeared in a TV ad against fakes. The 30-second spot is a joint effort by Hong Kong's Intellectual Property Department and the California Commission for Jobs and Economic Growth.

Customs official Chiu said the vendors have elaborate systems that help them avoid arrest. They employ lookouts and frequently relocate storerooms. In some markets, the goods are displayed on the street. Customers pick out what they want from catalogues and the goods are later delivered. Sometimes, shoppers are led to back alley showrooms full of fakes.

3. FBI and China discuss piracy, computer crime
(from *The Wall Street Journal*, 8 December 2005)

The Federal Bureau of Investigation has initiated talks with senior Chinese officials to develop a closer working relationship to reduce computer-related crime and intellectual-property theft in China.

Louis Reigel III, assistant director of the FBI's cyber division, said he had met with his counterparts in China's Ministry of Public Security to discuss a wide range of issues. He spent a week early last month meeting with officials and touring places where pirated goods and other fake copies of products are sold.

China is making progress in a number of areas, but "it is a long-term issue that is not going to go away in a week or two," Mr. Reigel said.

U.S. and Chinese officials plan to meet again next month to discuss cooperative efforts as well as a potential joint venture with the European Union to crack down on both illegal counterfeiting of U.S. and European goods as well as cyber-related crime such as computer intrusions coming from China. A press attached for the Chinese embassy didn't answer requests for comment.

4. Police raid pirate nest near Xiangyang market
(from *Shanghai Daily*, 10 December 2005)

Shanghai police confiscated suspected counterfeit clothing bearing the logos of top fashion brands and questioned a group of foreign customers in a raid at a residential building near the city's Xiangyang Market. The crackdown followed a tip from the state intellectual property investigators who were in town for three days as part of a nationwide campaign against pirated goods.

Authorities were still totalling up the value of the confiscated goods. It was unclear if any arrests were made in the sweep.

The raid took place at a four-story residential building on the downtown Nanchang Road, around the corner from the popular street market. No goods were seized at the market itself, but officers said they encountered many customers looking at a wide variety of products in the residential building.

Investigators found clothing, shoes and accessories such as wallets and watches, all bearing labels of famous brands including Louis Vuitton, Chanel and Rolex, piled up in five rooms on the first and second floors.

The Xiangyang Market is also where two officials from the State Council's Intellectual Property Supervision Team picked up the trail that eventually led to the underground sales outlet.

5. Japanese clothing retailer wins trademark dispute in China
(from *Asia Pulse*, 13 December 2005)

Japanese clothing retailer Ryohin Keikaku Co. (TSE:7453) announced Monday that the Chinese trademark authority has ordered Jet Best Investment Ltd. of Hong Kong to stop using Mujirushiryohin and MUJI brand names. The ruling, which was issued Nov. 30, will become final unless JBI files a formal objection within 30 days.

Ryohin Keikaku, which markets a wide range of products worldwide under the Mujirushiryohin and MUJI brands, filed its complaint in May 2000, demanding that the authority cancel JBI's registration of the trademarks in China.

Once the ruling becomes official, Ryohin Keikaku plans to start marketing MUJI brand clothing items in China. The firm opened its first store on the Chinese mainland in Shanghai in July 2005 and started selling products, except for clothing.

Since registering the trademarks in 1995 for its clothing, socks and gloves, JBI has been selling these products through its 17 stores in China.

6. Patent seminar opens
(from *Shanghai Daily*, 14 December 2005)

A five-day China-Europe patent licensing seminar opened yesterday in the city to offer training to the city's patent agents. This is part of a comprehensive program financially supported by the EU-China Small Projects Facility Foundation. China currently has 4,000 licensed patent agents and 600 agencies.

7. Chinese, US jurists help Chinese companies deal with US IPR charges
(from *Xinhua News Agency*, 15 December 2005)

Jurists from China and the United States on December 14 gathered in Hangzhou, east China, at a forum on the U.S. International Trade Commission (USITC) "337" Investigations in a bid to help Chinese enterprises respond to charges of intellectual property rights (IPR) infringement.

Under Section 337 of the United States Tariff Act of 1930, imported products that allegedly violate U.S. IPR can be barred from entry into the United States. Complaints under Section 337 are made to the USITC, and generally involve allegations of infringement of patents, trademarks or copyrights.

Many enterprises along the east China coast are export-oriented and many of their products are sold to the United States.

"However, few of them are aware of IPR protection, especially Section 337 investigations, and some have suffered a great loss in export deals," said Zhang Qin, deputy director-general of China's State Intellectual Property Office (SIPO).

"We will establish an IPR protection system and relevant rules to help Chinese exporters in their development in the domestic and international markets," he added.

The two-day seminar -- American Intellectual Property and "337" Litigation Practices -- is sponsored by the Intellectual Property Development and Research Center of the SIPO.

Top on the agenda are issues such as the judicial system in the United States and its jurisdiction over IPR related disputes, strategies and countermeasures for Chinese enterprises involved in IPR-related disputes in the United States and the interface between anti-trust and IPR.

The participants also include Randall Rader, judge of the United States Court of Appeals for the Federal Circuit, and Charles Bullock, the ITC Administrative Law judge.

MALAYSIA

News in December 2005

1. Japan and Malaysia sign agreement for economic partnership
(from *Thai News Service*, 16 December 2005)

On December 9, the Cabinet of Japan made a decision on the signing of the Agreement between the Government of Japan and the Government of Malaysia for an Economic Partnership ("JMEPA").

The JMEPA will result in tariff elimination on about 97% of trade in goods between the two countries on a trade volume basis, which will considerably promote trade in agricultural, forestry and fishery products as well as industrial products between the two countries.

The JMEPA will also contribute to capacity building of peoples through the increased cooperation in various fields such as agriculture, forestry, fisheries and plantation, education and human resource development, information and communications technology (ICT), and science and technology.

By providing a solid basis for the liberalization and facilitation of trade and investment between the two countries, the JMEPA will mark a new era for Japan-Malaysia strategic partnership. The comprehensive partnership under the JMEPA including trade in goods and services, investment, intellectual property and competition will enable the two countries to further invigorate their economies and strengthen their ties.

2. Intellectual property as value driver

(from New Straits Times, Malaysia, 29 December 2005)

The measure of economic competitiveness among nations will increasingly be driven by a nation's ability to innovate, create and exploit new types of economic assets built from knowledge capital.

Innovation generates IP such as patents, copyrights and industrial designs. If such IP assets are properly exploited, they generate economic returns. Likewise, if IP assets are left idle, they represent wasted economic assets.

Many countries today are competing to position themselves not just as innovation hubs but IP hubs, too. But given the levels of economic development and the sophistication of the existing business and legal infrastructure including its enforcement abilities, the performance of different countries in the area of IP creation, protection, management and exploitation varies tremendously.

Not to be left behind in the international IP race, Malaysia has also intensified measures to promote its IP industry. As a reflection of the Malaysian Government commitment to promote IP, March 3 has been declared as IP Day.

With the motto IP as a Current Economic Spinner, Malaysia has embarked on several major initiatives to transform its economy into the knowledge- based economy and to accelerate plans to achieve the objectives of Vision 2020.

Vision 2020 commits Malaysia, among others, to becoming a developed nation, a scientific and progressive society with an economy that is fully able to adapt, innovate and invent, that is increasingly technology- intensive and an economy driven by brain power, skills and diligence, in possession of a wealth of information.

The Malaysian Government recognises that innovation is a vital component of economic prosperity. Prime Minister Datuk Seri Abdullah Badawi himself has commented that the wealthiest nations of the world are the ones that are also the most innovative.

Malaysia wants to build a society that is innovative, creative, resourceful and driven by knowledge. It intends to add value to the human capital base further, to develop and enrich Malaysians to be able to compete against the best in the world.

Malaysia wants to increase its innovative capacity and to sharpen its competitive edge. The Government believes that for Malaysia to continue to grow and ultimately reach Vision 2020, it must become better at innovation.

IP rights assets are now collectively recognised as one of the principal assets of many of the world's largest and most innovative companies. IP rights which are a sub-set of intellectual assets are rights that have a legal basis for protection and these includes patents, trademarks, copyrights and trade secrets.

IP asset management is about designing a structured framework at the enterprise level to manage intellectual assets in a manner that enables the enterprise to extract commercial value of its intellectual assets particularly its intellectual property rights.

New strategies, tools and techniques have evolved to allow intellectual assets to be exploited optimally for revenue generation and to build shareholder value. Companies with strong IP patent portfolio, for example, tend to be companies that possess strong market potential.

And nations that are able to create an IP eco-system that promotes the creation, protection, management and exploitation of IP stands to benefit from rejuvenated economic growth based on IP as an emerging economic asset.

The challenge for many developing countries like Malaysia is to continue strengthening the legal framework for IP protection particularly enforcement. By developing economies that protect IP diligently and creating a business and economic infrastructure that promotes IP value extraction will attract greater foreign investment in the innovation and knowledge capital sectors.

SINGAPORE

News in December 2005

1. Reduced piracy an IT boost
2. Singapore's Biosensors may rise as patent application progresses
3. Online sale of pirated games and movies
4. Vertical exclusion to apply to IPR

1. Reduced piracy an IT boost
(from *Business Times, Singapore, 9 December 2005*)

A 10 percentage point reduction in Singapore's piracy rate of 42 per cent over four years would help boost the size of Singapore's information technology (IT) sector by nearly US\$1 billion, a study by the Business Software Alliance (BSA) shows.

The worldwide study covered 70 countries and was done by IT research firm IDC. BSA, the premier worldwide software industry body, counts companies like Microsoft, Adobe, Apple, HP, and IBM among its members. Its aim is to reduce software piracy.

Jeffrey Hardee, BSA's Asia vice-president and regional director, told BT that Singapore now enjoys the benefits of having the world's largest IT sector as a percentage of its gross domestic product (GDP). 'A 10 per cent drop in the piracy rate, from the current 42 per cent, would not only increase the size of the IT sector, it would also add 3,700 jobs and increase local industry revenues by another US\$573 million,' Mr Hardee said. This would, in turn, generate an additional US\$150 million in new tax revenues to help the Singapore government pay for vital public services.

According to an earlier study done by IDC, for BSA, Singapore's piracy rate - which is one of the lowest in the Asian region - dropped one percentage point to 42 per cent last year, from 43 per cent in 2003. Only New Zealand (23 per cent), Japan (28 per cent) and Australia (32 per cent) had a lower piracy rate than Singapore in Asia-Pacific. Overall, Asia-Pacific's piracy rate was 53 per cent last year.

2. Singapore's Biosensors may rise as patent application progresses
(from *AFX Asia*, 9 & 14 December 2005)

Health care company Biosensors International Group Ltd may rise after it received a "notice of allowance" from the United States Patent and Trademark Office (USPTO) for a patent application relating to its work in the use of the drug Everolimus on vascular stents in combination with a range of polymer coatings.

A "notice of allowance" is a written notification that the USPTO has determined that there are allowable claims in a pending patent application. Receiving such notice is a necessary step on the way to patent grant and publication.

Earlier this year, Biosensors received a US patent covering the use of certain antirestenotic, immunosuppressive drugs including Everolimus in combination with a biodegradable drug-release polymer coating on an endovascular stent.

Biosensors Group Ltd may retreat after it said that it is being sued in the Netherlands by US-based Boston Scientific Corp and Angiotech Pharmaceuticals Inc of Canada over an alleged patent infringement with the sale of its drug-eluting stent (DES) product called Axxion.

"On December 9 (they) commenced legal action against the company and certain subsidiaries alleging that the company's Axxion stent infringes on European patent number 0706376, owned by Angiotech," it said.

Biosensors said that it intends to defend itself against the claims made by Boston Scientific and Angiotech, and is currently in discussion with its legal advisers.

3. Online sale of pirated games and movies
(from *The Straits Times Newspaper*, Singapore 16 December 2005)

Three men and a woman were arrested for allegedly peddling pirated TV shows, movies and computer games on the Internet. Police seized about 3,500 CDs and DVDs as well as computers.

The Intellectual Property Rights Branch acted on a tip-off that four online users were selling pirated Hong Kong TVB serials, PlayStation Portable games and discs containing software.

They allegedly advertised their wares on online auction sites and forums. Buyers apparently contacted them online or through their mobile phones and paid through Internet banking, ATM transfers or in cash. Two of the four allegedly also downloaded titles illegally from the Internet.

The penalty for possessing copyright-infringing material for sale and distribution is a fine of up to \$10,000 for each illegal item, up to a maximum of \$100,000, as well as a jail term of up to five years.

4. Vertical exclusion to apply to IPR
(from *Business Times*, Singapore, 21 December 2005)

The Competition Commission of Singapore yesterday clarified that intellectual property rights (IPR) can be excluded from vertical agreement provisions under the Competition Act.

'The vertical exclusion covers IPR provisions, provided they do not form the primary object of the agreement, and are directly related to the use, sale or resale of goods and services,' it said yesterday in its finalised guideline on the treatment of IPRs.

'The vertical exclusion is meant to apply to purchase and distribution agreements only, and not to IP licensing agreements.' For example, vertical restraints within a franchise agreement - such as the use of the trademark - will be generally covered by the vertical exclusion under the Third Schedule of the Act.

This clarification comes as part of a set of changes made to the guideline on the treatment of IPRs under the Act following public consultation by the commission. The guideline was revised to reflect the case that agreements involving price-fixing, market-sharing or output limitations will always be deemed to have an appreciable adverse effect on competition only if these agreements were made between competitors.

The guideline has also been clarified to indicate that grantbacks - especially non-exclusive ones - will generally not be viewed as being anti-competitive. Grantbacks are arrangements under which a licensee assigns - or agrees to assign - to the licensor the rights over the licensee's improvements to licensed technology.

With regards to cases which may involve provisions under both the Act and intellectual property law (such as the Patents Act), the commission will work with the Intellectual Property Office of Singapore and the Ministry of Law to decide which regulator is best placed to handle the case in accordance with their respective judicial powers.

This will help prevent double jeopardy and will minimise the regulatory burden in dealing with the case, the commission said. The finalised guideline on the treatment of IPRs is the last of a set of revised guidelines issued under the Act in relation to the prohibitions that will come into effect on Jan 1.

THE PHILIPPINES

News in December 2005

1. [Software group cites raids on fake products](#)
(from *Business World*, 6 December 2005)

The Business Software Alliance (BSA), a nonprofit trade group consisting of the world's biggest software manufacturers, has cited the National Bureau of Investigation's (NBI) Intellectual Property Rights Division for its series of raids against violators of the copyright law.

Since the start of the Pilipinas Anti-Piracy Team crackdown in September, the division headed by Jose Justo Yap, has raided eight companies found to be using software without proper licenses, and has arrested an American and his Filipino partner for selling pirated software.

Just recently, the NBI conducted a raid against the three branches of Expressions Center for Learning or Excel, a large internet cafe chain with more than 40 branches nationwide. During the raid, the agents confiscated 286 desktop computers and software worth P10 million.

The BSA maintains an anti-piracy hot line for reports on companies using unlicensed software or for inquiries on software piracy. In the Philippines, the BSA maintains a memorandum of understanding with the Philippine Software Industry Association, Philippine Internet Services Organization, the Institute of Internal Auditors and the Association of Government Internal Auditors.

2. NBI cracks down on pirated software
(from *Philippine Daily Inquirer*, 10 December 2005)

Agents of the National Bureau of Investigation (NBI) on Friday raided three Internet cafés using unlicensed Microsoft software and seized 32 computers worth over P1 million.

Raided were the Jacctags Computer Service Center on Anonas Street, in Kamias, Quezon City, and two branches of the Archisoft PC-911 Sales and Services, one on Kamias Street, and the other at the second level of the Northmall in Rizal Avenue, Caloocan City.

NBI Intellectual Property Rights Division (IPRD) chief Jose Justo Yap said the confiscated desktop computers contained unauthorized reproductions of unlicensed Microsoft software like Windows XP.

Yap said the raids were prompted by a complaint filed by the Business Software Alliance (BSA), the organization of computer software manufacturers. Copyright infringement charges are being readied against the owners of the Internet café shops, he added.

3. RP may still exit property rights blacklist
(from *Business World*, 27 December 2005)

The Philippines may still get out of a United States blacklist of intellectual property rights (IPR) violators despite a Supreme Court decision rejecting the creation of local intellectual property rights courts, the American embassy said.

In an interview, embassy spokesman Matthew Lussenhop said the US government was more concerned about effective enforcement of IPR laws as well as the conviction of violators.

"I'm not saying that it will not have a direct effect but the creation of IPR courts is for the Philippine government to decide. It's not a requirement by the US government. What's important is better IPR protection, implementation of the law and prosecution," he pointed out.

The Supreme Court earlier rejected a proposal by the Intellectual Property Rights Office to set up special courts that will exclusively handle cases of IPR violations. American investors have been calling for the creation of such courts to speed up the litigation of IPR cases and the conviction of offenders.

The move is seen to help delist the Philippines from Tier 2 of the US priority watch list. The Philippines has been on the list for the fourth consecutive year.

The US is conducting an out-of-cycle review of Philippine compliance with IPR laws. It is expected to decide on the country's status next year.

"The review is ongoing. If we see no improvement, if IPR violations get worse, the Philippines may have to be relegated as a priority country. The only priority country right now is Ukraine," the envoy said.

Apart from the Philippines, 13 US trading partners are on the priority watch list meriting close attention - Argentina, Brazil, China, Egypt, India, Indonesia, Israel, Kuwait, Lebanon, Pakistan, Russia, Turkey and Venezuela.

The embassy earlier said US companies lose around \$200 million annually as a result of intellectual property theft in the Philippines. There are now at least 1,500 cases of intellectual property rights violations pending in the Department of Justice, almost half of which had either been dismissed or filed in courts.

INDONESIA

News in December 2005

1. Du Pont files lawsuit against probio on patent violation

(from Bisnis Indonesia, 5 December 2005)

E.I Du Pont De Nemours and Company, a US-based company, has filed a lawsuit against PT Probio International Chemicals and asked for at least US\$10 million in compensation for violating patent of metil metsulfuron herbicide products.

PT Probio International Chemicals is accused of using and commercially selling the patent owned by Du Pont without having the license or permission from the American company. The herbicide product is useful to control weeds in plantation plants, such as oil palm, rubber, and others. The name of the herbicide product is Ally 20 WDG.

When contacted by Bisnis, Ali Oksy Murbianto, legal representative of Du Pont, confirmed that his client had filed the lawsuit and the case was currently being processed in the Jakarta Commercial Court.

According to Oksy, his Client was the patent's owner of the herbicide product, which had been registered in the Directorate General of Intellectual Property Rights at the Department of Justice and Human Rights Affairs since March 22, 1999 and would only expire on December 1, 2008.

"The conduct of the accused is clearly a violation of law and of my client's right as the patent's owner. The conduct has violated Article 16 of Law No.14/2001 on Patent," he explained.

Separately, Agustinus Payong Dosi, legal representative of PT Probio International Chemicals, denied accusations made by Du Pont saying his client had violated Du Pont's patent. "PT Probio only sells, not uses, the product. Therefore, it is inappropriate for Du Pont to file a lawsuit against my client," said Agustinus.

2. RI supports amendment on TRIPs agreement

(from Bisnis Indonesia, 10December 2005)

Indonesia will support amendment on TRIPs Agreement on geographical indications at the WTO Ministerial Summit in Hong Kong on December 13-18, 2005.

The amendment of TRIPs (Trade Related Aspects of Intellectual Property) Agreement covers the extension of geographical indication protection for products other than wine and high-alcohol beverage.

According to Abdul Bari Azed, Director General of Intellectual Property Rights at the Department of Justice and Human Rights, the extension would open possibilities for other products, such as coffee, pepper, and tobacco, to get geographical indication protection.

Bari, one of Indonesian delegates at the WTO forum, explained that there were two major issues in the discussion about geographical indication regulations.

The first issue is whether the geographical indication protection should be extended to other agricultural products other than wine and high-alcohol beverage. The second one is that whether the multilateral and notification system will be applied to wine and other high-alcohol beverage.

3. Draft law on cybercrime hung despite rising scams

(from The Jakarta Post Newspaper, Indonesia, 27 December 2005)

Cybercriminals can rest easy in the knowledge they will not have to spend a maximum of 10 years in jail or pay a fine of as much as Rp 2 billion (some US\$200,000), at least for another three months.

A draft law on cybercrime was submitted to the House in July, to serve as a legal basis for e-commerce and activities involving the utilization of information technology, but House members say the draft lacks "focus" and will review it before deciding whether to enact the law. The earliest this would happen is three months from now.

Dedy said it would be better for this draft law to focus on e-commerce and e-business, and a separate draft law could be introduced later to deal solely with cybercrime. In recent years, since the use of information technology has become so widespread, there has been a marked rise in the kind of computer-related crimes previously only seen in developed countries, like credit card fraud and computer hacking.

An Internet Security Intelligence Briefing issued by VeriSign of the U.S. in January last year placed Indonesia third -- behind the United States and Canada -- in terms of countries with the highest volume of cyberfraud.

The absence of a legal basis for engaging in e-commerce here, as well as a lack of sanctions for cybercrime, has in part contributed to the large amount of cyberfraud and the lack of investment to develop the IT sector.

The draft law on cybercrime, formally known as the Electronic Transaction and Information Law, was drafted in March, 2003, but was not submitted until July, 2005. The draft covers a wide range of topics, from electronic signatures and cyber intellectual property rights to the definition of cybercrime.

IT observers, including the Indonesian IT Federation, have highlighted the urgent need to pass the draft into law as a legal basis for e-commerce and e-government.

The Ministry of Information and Communication's director general for ICT applications, Cahyana Ahmadjayadi, said IT had proven to be a useful tool to boost efficiency and productivity, but also created opportunities for criminal acts. "Both are strong enough reasons for pushing it (the draft)," he said.

VIETNAM

News in December 2005

1. Counterfeit fight requires business input
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5. Fight against fake goods needs close co-ordination
6. Copyright law protects national folk culture

1. Counterfeit fight requires business input
(from *Thai News Service, 1 December 2005*)

Vietnamese businesses should lead the fight against counterfeit goods and copyright violations in the country, said Christine Lai, general director of the French Producers Co-operative, adding that only close co-operation of businesses and authorities can curb the increasingly serious problem.

According to analysis from French experts, businesses have two ways to protect their intellectual property. The first is to keep their technologies or ideas secret while they exploit their advantages. This is

not often feasible in today's fast-paced high-tech business world, where technology can be discovered, disseminated and applied in a very short time, she said.

The other is to use laws to protect patents and patent applications, which they said was the most practical solution for most businesses. Companies can find legal protection through copyright and intellectual-ownership registration. However, the experts warned, because companies can find ways to disguise copyright violations, judicial and State agencies encounter difficulties protecting businesses. They said that co-operation from the private sector was essential.

2. Domestic businesses face trademark disputes abroad
(from *Thai News Service*, 6 December 2005)

Many domestic enterprises are increasingly facing disputes in international markets as they pay little attention to patent registration and trademark protection abroad, said the deputy head of the Intellectual Property Office, Tran Viet Hung.

Pham & Associate Law Office representative Bach Thanh Binh said some domestic enterprises entrusted the matter with foreign agencies and partners, adding that disputes were inevitable if foreign agencies registered these trademarks in their own countries and consider them their own.

Binh cited several examples of firms which have lost product trademarks abroad, including Ben Tre coconut candy, Trung Nguyen coffee, PetroVietnam and Vinataba tobacco.

Recent statistics from the Intellectual Property Office reveal that domestic enterprises submitted only 1,000 trademark and patent registrations abroad, far short of meeting the needs of Vietnam's businesses. "Enterprises lose export markets and trading partners when they lose trademarks," Binh said. T&A Vietnam's Pham Quang Hung said trademarks should be registered and protected in domestic and international markets because they comprise as much as 90 per cent of product value.

He said businesses must become aware of the importance of registering international trademarks, adding that enterprises must take the initiative in protecting their trademarks and markets in the highly-competitive global economy.

3. Seminar calls for protecting copyright holders
(from *Thai News Service*, 12 December 2005)

The Copyright Office of Vietnam has called on copyright holders to take full advantage of the technological means to protect their legitimate rights and interests as well as to update information regarding management of those rights.

Speaking at a seminar on Copyright in the Digital Environment, held in Hanoi on Tuesday, the director general of the Copyright Office Vu Manh Chu said the rights of producers, importers, distributors and providers of digital services become operational only when they have business licenses granting explicit use of these rights.

The seminar, jointly organised by the Copyright Office of Vietnam and Swiss Federal Institute of Intellectual Property, was part of the special programme of co-operation between Vietnam and Switzerland in the field of intellectual property.

Chu said copyright and related laws were included in Vietnam's 1992 Constitution, the civil codes of 1995 and 2005 and the Law on Intellectual Property Rights of 2005.

The State was fully aware of its responsibility and management role in protecting intellectual property rights during the global integration process, and last month, at the eight session of the 11th National Assembly, passed the Law on Intellectual Property Rights, Linh said, adding that the Government had given top priority for implementing the law.

4. Vietnam holds seminar discusses protecting IPRs
(from Thai News Service, 14 December 2005)

Scientists and business managers at a seminar in Hanoi on Monday shared the view that protection of intellectual property and information on industrial property has helped businesses to accelerate technology transfers.

They agreed that the protection system would provide legal and technical information for entities in need of technology.

Speakers at a seminar held that with assistance from international organisations, including the World Intellectual Property Organisation (WIPO), the Department for Intellectual Property under the Ministry of Science and Technology, had a library of industrial property-related information, meeting the demands of enterprises, research institutes, universities and individuals. However, information on inventions has not yet been compiled.

The seminar was jointly held by the Department for Intellectual Property, WIPO and the Hanoi University of Technology.

5. Fight against fake goods needs close co-ordination
(from Thai News Service, 23 December 2005)

In recent years, market management forces and relevant agencies have worked very hard to combat the sale of fake goods, however, the fight has not yet lived up to expectations. They have called for close co-ordination from enterprises to remedy the situation in order to protect enterprise trademarks and consumer interests.

Many businesses have different plans on how to combat counterfeit goods and protect the image of their products. The Thong Nhat Electric Engineering Company has renewed its production lines and technology to diversify product designs, and distributed pamphlets to instruct consumers how to distinguish between real and fake goods.

The Binh Tien Footwear Company is known for its products bearing the trademark Bitis. However, counterfeit Bitis products are sold publicly at markets, small shops and even on street pavements. According to Le Hai Nam, who is in charge of marketing Bitis products in the northern region, one of the effective measures to combat counterfeit goods is to attend trade fairs.

The rural market is the target for fake goods producers and traders as rural people get little information about fake goods and psychologically they like low-cost products. To actively combat fake goods, the Thanh Ha Organic Fertiliser Company registers its products before circulating them on the market.

The NICOTEX Plant Protection Herbicides Company is co-ordinating with provincial farmer associations and agricultural extension association to distribute products directly to farmers and instruct them in to how to distinguish between real and fake herbicides. Nguyen Thanh Minh, company director in the northern region, said to combat the fake goods, the company frequently launch market inspection campaigns and established close contact with local administrations to deal with any feedback from consumers.

According to Le The Bao, president of the association on Combating Fake Goods and Protecting Consumer Interests, businesses should market their products and pay special attention to building their trademarks. Meanwhile, functional agencies should strictly deal with the copying of brand names, including those from overseas, to help domestic businesses successfully build their trademarks.

The fact is that many businesses do not dare to report to the police and market management forces when they uncover products copied by other producers. They are afraid that if they drum up the case, consumers will be cautious when selecting their products. Other businesses think that they will pay a great deal of money for functional agencies to deal with the case if their products are of small value such as matches, tooth pics and tissues were found fake. This is why fake goods are still rampant.

To combat fake goods effectively and protect business credibility and consumer interests, businesses should co-ordinate closely with functional agencies rather than wait for action from functional agencies or complaints from consumers.

6. Copyright law protects national folk culture
(from *Thai News Service*, 23 December 2005)

Users of items of Vietnam's folk culture are required to get their owners' permission or pay for royalties following the Law on Intellectual Property Rights, effective as of July 1, 2006, says an official from the Ministry of Culture and Information.

According to Vu Manh Chu, general director of the Copyright Office of Vietnam, any individual or organisation, who wishes to use folklore, art or literature first needs approval from the community authority where the folk culture originated.

Chu's office and its partners are responsible for the Copyright Protection of Expressions of Folklore, including the Swiss Federal Institute of Intellectual Property (SFIIP). Chu and his colleagues outlined some of the parameters and difficulties in the law with cultural researchers at a copyright seminar in HCM City last week.

Speaking at the event, Emanuel Mayer, attorney at law and legal advisor from the SFIIP, said the protection of folklore should be used to safeguard it and prevent misuse. However, careful drafting is required so that the protection does not hinder the natural progression of culture, or those who want to use it effectively.

"Since 1980, Vietnam has achieved remarkable achievements in researching, chronicling and publishing folklore art and literature, including ethnic minority epic stories, painting, music and dance, and architectural works," said Chu at the event.

But Chu went on to say that Vietnamese artists and entertainment companies have already run into problems trying to cope with the law trying to find original artists, and battling the fact that Vietnam does not yet have documentation to interpret and govern copyright.

To Ngoc Thanh, chairman of the Vietnam Folklore Association, stated copyright protection for the folklore art and literature still new to Vietnam.

Thanh also affirmed the Law on Intellectual Property Rights approved by the National Assembly last month, "will help us to develop and integrate into world culture more as Vietnam accedes to the World Trade Organisation."

Thanh said that paying fees for copyright in folklore is no easy task. "We are newcomers to these rules and in time we will do a better job," he said, outlining payment in three levels: 30 per cent to communities, 30 per cent to artisans, and 40 per cent to performers.

"The money paid to the communities would help them impart the villages traditional culture to young generations," he said.

Thanh said his association has invested both money and human resources to create better copyright agreements. "We will also sign copyright deals with publishers and music companies to print and produce folk art that we have found and collected.

One of the biggest problems, Huyen said, is that young artists don't know where and how to contact art owners to make copyright deals. Music producers and organisers are facing the same situation. Their CDs and shows, featuring works using folk music, can no longer freely be used.

"Cultural authorities should work more quickly and effectively to help us understand and apply copyright protection more effectively," said a music producer in HCM City.

INDIA

News in December 2005

1. E-encyclopaedia on traditional knowledge getting ready
2. India wants patent laws to protect biosphere
3. Suzuki sues 10 Indian companies for illegal use of brand name
4. Draft IPRs policy released

1. E-encyclopaedia on traditional knowledge getting ready
(from *The Hindu*, 6 December 2005)

In order to protect the vast traditional knowledge, India will publish an encyclopaedia, running into 30 million pages in electronic format, that will keep intellectual property invaders from patenting indigenous wealth.

Work on the book is apace and already a third of it has been completed. About 10 million pages have been digitised, said Mr Ajay Dua, Secretary, Department of Industrial Policy and Promotion, at a FICCI-WIPO seminar.

Called Traditional Knowledge Digital Library(TKDL), this initiative is to prevent people abroad from patenting traditional Indian knowledge, be it yoga or medicine systems such as the Ayurveda.

"Even as this exercise (TKDL) is going on, 150 yoga asanas (postures) have been patented abroad...134 of these asanas were granted patent by the US Patent and Trademark Office," Mr Dua said. He added that about 1,500 (postures) have been given trademark in other parts of the world. While traditional knowledge has been in public domain in India in various languages the same was not accessible by patent examiners abroad he noted.

The e-document will be available in all major international languages, including French, German and Japanese, so that examiners do not grant patents inadvertently.

2. India wants patent laws to protect biosphere
(from *The Hindu*, 6 December 2005)

India to take on U.S., U.K. on the issue Information to help prevent bio-piracy Separate court to handle IPR cases suggested India is all set to fight the U.S. and the U.K to ensure that all patents obtained for

products that make use of elements from the biosphere cite its origin and geographical site, said P. Ganguli, Chief Executive Officer of IPR Vision.

Mr. Ganguli stressed the need to train patent officers to understand the exclusions that exist in the IPR Act, such as the clause that provides a measure of protection for traditional knowledge. According to the IPR, "any invention that is traditional knowledge or, in effect, traditional knowledge will not be patentable in India."

Mr. Ganguli advocated the need for setting up a separate court to handle all cases regarding IPR. For this, there is a need to train more patent officers and provide them with incentives to remain with the patent offices as well as to train more lawyers and judges on patent laws. P. Balaram, Director, Indian Institute of Science, who delivered the keynote address, called for the creation of an environment that integrates the IPR culture with research and development.

3. Suzuki sues 10 Indian companies for illegal use of brand name (from *Asia Pulse*, 9 December 2005)

Suzuki Motor Corporation (SMC), Japan, said it has filed suits in the Delhi High Court against ten companies for using the brand 'Suzuki' as trademark or part of their corporate names. These companies are in various businesses like finance, textile manufacture, spinning and weaving. Through the suits, SMC has sought injunction against the use of the word 'Suzuki' by these companies, a statement by Maruti Suzuki, the company's Indian subsidiary, said.

SMC is the owner of the registered trademark 'Suzuki' and the ten companies, against whom SMC has filed the suits, were using the word 'Suzuki' without SMC's permission, it said.

"These companies have no connection with SMC and the use of the word 'Suzuki' by them creates the impression that these companies are connected to SMC," the statement said. It said suits against the companies were filed as the companies were continuing to use the word 'Suzuki' despite cease and desist notices.

In India, SMC has granted license to Maruti Udyog Limited (for cars) and Suzuki Motorcycle India Private Limited (for motorcycles and other two wheelers) to use the 'Suzuki' brand name.

4. Draft IPRs policy released (from *The Hindu*, 15 December 2005)

Kerala's draft policy on Intellectual Property Rights (IPRs), prepared by the Law Department, was released by Chief Minister Oommen Chandy at a function chaired by Law Minister K.M. Mani. The Chief Minister said the policy had great relevance as the importance of IPRs had increased. The policy document could be used as a model for the entire country.

Mr. Mani felt that the policy would help in protecting the traditional knowledge of Kerala and prevent it from becoming extinct. Kerala did not have a clear IPRs policy so far. But global changes made such a policy inevitable. He stressed the need for taking immediate steps for protecting the seeds and methods of cultivation developed by the farmers here over the years. He warned that otherwise developments of the type in which a German company staked claim to India's exclusive Vasthu vidya would be repeated.

BRUNEI DARUSSALAM

Brunei shops said clearing stocks of pirated discs
(from *BBC Monitoring Asia Pacific*, 29 December 2005)

Since last week, the public has been puzzled by the decreasing number of pirated DVDs, VCDs and CDs that are being offered at popular shops in commercial areas like Kiulap and Gadong as well as other districts for a mere 1 dollar. Some establishments have even started selling mostly original DVDs, VCDs and CDs, on top of the effort to clear out their stock.

It seems that the days of pirated DVDs, VCDs and CDs may be numbered, as they are sold without the consent of their copyright owners. When asked, shop assistants refused to comment. It is believed copyright owners from overseas have been or will be in Brunei to check on possible infringements of their products, including computer software.

In the past, Royal Brunei Police Force personnel have regularly raided establishments after receiving formal complaints on intellectual property infringement launched by their copyright owners. The police had enforced ownership of some international VCD distributors.

Under the Emergency Order (Copyright) 1999, under Section 204, anyone who is caught on copyright infringement, selling, smuggling or distributing goods except for personal use and domestic purposes is liable to a fine, an imprisonment for a period not exceeding two years, or both.

Those found committing the offence under this section, if found guilty, could face a fine of not more than 5,000 dollars, an imprisonment not exceeding six months, or both.
