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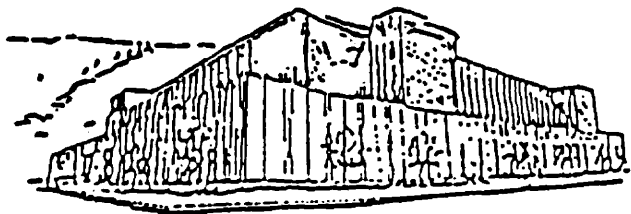
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**The State of Intellectual Property Rights in the Asia-Pacific Economic
Cooperative (APEC)**

By

Jeffrey P. Radighieri

B.B.A., Texas A&M University, 1997

Presented in partial fulfillment of the requirements

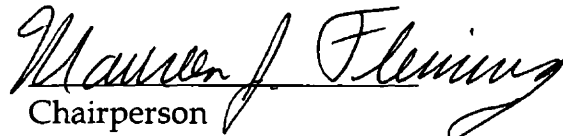
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The University of Montana

1999

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Chairperson


Dean, Graduate School

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The State of Intellectual Property Rights in the Asia-Pacific Economic Cooperation (APEC)

Chairperson: Dr. Maureen J. Fleming 

This paper addresses the state of intellectual property protection in the Asia-Pacific Economic Cooperation (APEC). Intellectual property is a term that encompasses patents, trademarks, copyrights, etc. It can be defined as technical, literary, and artistic original works. Protecting intellectual property allows for those who invent or design to be compensated for their works. Protecting intellectual property is necessary due to piracy, or the illegal reproduction or use of copyrighted, patented, or trademarked works. Because piracy exists, it is necessary for governments to develop laws and enforcement procedures to prevent piracy from being widespread.

The current state of intellectual property is an important issue. This paper focuses on the issue in APEC, a multinational trade agreement comprising most of Southeast Asia along with North America and a few other nations. A few members such as the United States and Japan are world leaders in the protection of intellectual property rights, while others such as Russia and China are well behind the average in their efforts.

International trade has become increasingly important as the world moves towards a global economy with the proliferation of the Internet and other technological innovations. As international trade becomes more important, the need to protect original works also becomes more important. Intellectual property protection allows inventors and creators to feel safe that they will get compensated for their efforts. Piracy adds additional products to the market, which drives down the price of legitimate goods, thus reducing the profitability of companies.

In light of the problems that piracy causes, APEC should take a number of actions to help ensure the protection of intellectual property. APEC should be involved in the education of lesser-developed countries both inside and outside APEC. Education people about what intellectual property is could greatly help the protection of patents, trademarks, and copyrights. The World Trade Organization and the World Intellectual Property Organization should also be involved in education on a local level.

APEC should also provide incentives to its members for the protection of intellectual property. This would discourage illegal reproduction of protected works. Along with incentives, APEC should develop strong enforcement procedures that would discourage violations of intellectual property rights.

Table of Contents

CHAPTER ONE - INTRODUCTION.....	1
CHAPTER TWO - PIRACY	4
CHAPTER THREE - GLOBAL PICTURE.....	8
NORTH AMERICA	8
CENTRAL AMERICA	8
SOUTH AMERICA.....	9
THE CARIBBEAN	9
WESTERN EUROPE	9
EASTERN BLOC.....	10
SUB-SAHARAN AFRICA	10
NORTHERN AFRICA AND THE MIDDLE EAST	11
SOUTH ASIA	12
SOUTHEAST ASIA	12
CHAPTER FOUR - THE ASIA-PACIFIC REGION AND APEC	14
CHAPTER FIVE - TREATIES AND AGREEMENTS.....	19
THE BERNE CONVENTION.....	19
THE UNIVERSAL COPYRIGHT CONVENTION	20
THE AGREEMENT ON TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS	20
CHAPTER SIX - OTHER ISSUES IN INTELLECTUAL PROPERTY.....	25
THE ASIAN CRISIS	25
MARKETING ISSUES.....	27
1.) General Marketing.....	27
2.) Pricing.....	28
3.) Price Elasticity of Demand	30
CHAPTER SEVEN - CURRENT STATUS OF APEC MEMBERS' INTELLECTUAL PROPERTY PROTECTION.....	32
AUSTRALIA.....	32
BRUNEI	33
CANADA	34
CHILE.....	35
CHINA.....	35
HONG KONG	38
INDONESIA	39
JAPAN	40
KOREA	42
MALAYSIA	43
MEXICO.....	43
NEW ZEALAND.....	44
PAPUA NEW GUINEA	45
PERU.....	46
PHILIPPINES.....	47
RUSSIA	49
SINGAPORE.....	50

TAIWAN	53
THAILAND	54
UNITED STATES.....	55
VIETNAM.....	58
MEMBER NATIONS SUMMARY.....	59
CHAPTER EIGHT - CONCLUSION & RECOMMENDATIONS.....	63

Index of Tables

<i>Table 1-Trade Volume</i>	14
<i>Table 2-Global Trade Volume</i>	18
<i>Table 3-1995 Osaka APEC Meeting</i>	23
<i>Table 4-Asian Trade Volume</i>	25
<i>Table 5-Member Ratings.....</i>	60

Chapter One - Introduction

The goal of this paper is to discuss current intellectual property protection efforts in the Asia-Pacific region, synthesize data and draw conclusions related to intellectual property and APEC. This will be done through a discussion of the overall global picture of intellectual property, the Asia-Pacific Economic Cooperation (APEC) and its relevant treaties and agreements. Specific member countries of APEC are discussed, and conclusions and recommendations are developed regarding the state of intellectual property protection in APEC.

In today's business climate, protecting intellectual property is a prime concern. Being able to protect products and processes worldwide allows firms to receive the full benefit of being the creator or inventor of those products and processes. However, there is an increasing concern regarding protecting these entities. Many regions of the world cannot afford to pay the premium that accompanies patented and copyrighted objects, so they proceed to pirate (copy without paying compensation) these products and processes. This allows them to sell at a lower rate so that people within those markets are able to purchase these products. The subject of pricing is a related issue, which will be discussed later. When this occurs, the originator does not see the fruits of labor in terms of royalties in these markets. Therefore, being able to protect items from being illegally copied is a growing issue in today's global marketplace. The current financial crisis in Asia has further increased the complexity of protecting intellectual property.

Technological advancements and the Internet have blurred the economic boundaries among nations. Therefore, there is greater emphasis today on the global economy. As this global economy has grown over the years, many multinational trade agreements have been instituted. The major agreement in the Asia-Pacific region is known as the Asia Pacific Economic Cooperation (APEC).

Intellectual property is information that derives its intrinsic value from creative ideas. It is also information with a commercial value.¹ Intellectual property rights (IPRs) are bestowed on owners of ideas, inventions and creative expression that have the status of property. Like tangible property, intellectual property rights give owners the right to exclude others from access to or use of their property. Countries with innovative local industries almost invariably have laws to foster innovation by regulating the copying of inventions, identifying symbols and creative expressions.²

There are three main types of intellectual property. They are patents, copyrights, and trademarks. Patents are grants from the government providing for the exclusive right to manufacture, use, and/or sell a patented invention.³ They are usually awarded as either utility patents (new and useful process) or design patents (new design for an article to be manufactured). Copyrights are a group of rights in an original work of authorship.⁴ Copyrights are granted on many types of work, including literary works, computer software and musical compositions. A trademark is a word, phrase, symbol, or other object that is

used to identify goods or services to distinguish it from others and indicate its source.⁵

With regard to holding ownership of patents, copyrights, and trademarks, timing is the key. Some countries such as the United States, Canada, and the Philippines follow a first to invent policy. This means the one who invented the good or service has the legal ownership rights to that particular good or service.⁶ Other countries have a first to file policy. This policy grants ownership to the first person or firm to file for the legal right in that country.

Another issue concerning patents is that of patent flooding. Patent flooding entails filing numerous patents protecting narrow, minor technical improvements to a competitor's existing patents.⁷ This is common practice in Japan. This makes it difficult for a company to improve upon its own products without infringing on the intellectual property of the patent flooder.

The United States plays a huge role in protecting intellectual property. It also has a big interest in making sure other countries are abiding by intellectual property regulations. This is so because the United States is the world's largest economy and because many product and technological innovations originate in the United States. According to the World Trade Organization, the United States is involved in less than fifteen percent of the world's trade, with Germany a distant second at just over nine percent.⁸ Therefore, ensuring that intellectual property is protected can only benefit the United States and its economic interests.

Chapter Two - Piracy

Piracy is the illegal reproduction of licensed products and services. The piracy of intellectual property results in the loss of billions of dollars in revenue by those who have the legal right to produce and benefit from intellectual property. Piracy occurs mainly in the recorded music, film, and software industries. Estimated annual losses in revenue due to pirating are estimated at \$2.2 billion in the music industry and \$11.2 billion in the software industry.⁹

Developing countries tend to have a lower percentage of skilled workers per capita than developed countries, resulting in a diminished ability to generate commercially valuable innovations.¹⁰ Under this scenario, the implementation of strict intellectual property laws in developing countries may facilitate foreign profit making at the expense of domestic consumers.¹¹ Therefore, developing countries may often be better off "pirating" the technology of others, using it to reduce domestic prices and possibly to boost export sales of the "pirated" invention.¹² Another reason for the increase in interest among developing countries in implementing strict intellectual property regimes is that practical technology primarily is created through large investments in research and development--investments that developing countries cannot afford.¹³ It makes little sense for developing countries to protect investments that do not exist.¹⁴ On the other hand, the incentive not to provide protection is even greater if citizens of developing countries without significant patent (or other) protection

are still allowed to obtain protection in other developed countries.¹⁵ Under such a free-rider system, the developing country's citizens still have incentives to innovate to exploit their rights abroad, but can avoid the expense of paying royalties to foreign patent holders.¹⁶ The justification often used by developing countries is that their economic development is a primary goal, which, if achieved, benefits all nations.¹⁷ Knowledge that is necessary for economic development can be seen as the common heritage of mankind, and developing nations are therefore entitled to this knowledge at little or no cost.¹⁸ The United States and other developed countries strongly disagree with this theory, as American firms lose billions of dollars annually as a result of illegal reproduction efforts.

In publishing, protecting intellectual property has been a legitimate challenge. "Protection of intellectual property rights remains one of the critical challenges in the rapidly emerging digital world," says Brian Davies, President of Random House International.¹⁹ In Asia, the problem is more severe because of the current currency crisis. Because of the crisis, along with the strength of the American dollar, American goods are now more expensive in Asian nations. According to an Asian market expert, "prices of academic textbooks are likely to be out of reach of most Asian students, and sales of professional and trade journals will decrease because of the reduced purchasing power of libraries,

institutions, and individuals.”²⁰ This could lead to widespread book piracy as prices soar for copyrighted books.

The sale and production for export of pirated music products remains a major problem in China. In fact, 60 percent of all pirated compact discs in the world are produced in China.²¹ However, China signed an intellectual property agreement with the US in 1996. “In the US, just mention the word ‘China’ and the one word that comes to mind is ‘piracy,’” says Michael Primont of Cherry Lane Music.²² “However, China has made very positive efforts to educate the public and the industry.” Reports have shown that the country’s record companies have made good efforts toward promoting basic awareness of copyright and intellectual property. Many compact disc manufacturers have been forced out of business in recent years by the Audio-Visual Industry Association of China (AVIAC). According to the International Federation of the Phonographic Industry (IFPI), 1995 sales of pirated compact discs in China equaled the volume of sales of legitimate compact discs, or \$170 million.²³

Economies that provide for the protection of intellectual property benefit in many ways.²⁴ In addition to increasing the general pool of information and knowledge, adequate legal protection fosters trade and investment. When looking for new markets and economies in which to expand manufacturing or distribution facilities, companies often look to economies that protect their intellectual property.

In the next section, each region of the world is analyzed along with an overall global picture of intellectual property protection.

Chapter Three - Global Picture

The state of intellectual property protection on a global scale has been improving over the past ten years. Significant strides have been made to ensure that owners of protected works are compensated for the use or sale of their property. The regional trade agreements such as the North American Free Trade Agreement (NAFTA) and the European Union that have recently been made to emphasize intellectual property protection.

North America

NAFTA contains specific obligations requiring high levels of protection respecting patents, copyrights, trademarks, etc.²⁵ With the backing of the United States, NAFTA is a leading agreement in protecting intellectual property.

Central America

Intellectual property protection in Central America has been inadequate. Most countries in the region are on the United States' "watch list," which identifies countries that are far behind in respecting intellectual property. Though all countries in the region belong to the World Trade Organization, piracy is widespread and enforcement is nearly non-existent. El Salvador currently affords the strongest regulations in the region²⁶, and Panama is making the biggest strides towards protection.²⁷

South America

In South America, the Southern Common Market (MERCOSUR) agreement is providing steps toward protecting intellectual property. Intellectual property rights have been protected under the Reciprocal Promotion and Protection clause.²⁸ Another regional agreement on the continent is the Andean Pact, which also promotes freer trade in the region.²⁹

The Caribbean

Intellectual property protection in the Caribbean is weak. Piracy is ever present, and enforcement is almost non-existent. Some countries such as Jamaica are taking action, but any efforts made to date are not at all near standards set forth by the World Trade Organization or the World Intellectual Property Organization.

Western Europe

In Western Europe, the European Union (EU) supports strong protection for intellectual property rights and established the European Community Trademark Office in 1996, which issues trademarks that are valid in all 15 EU member states.³⁰ Harmonized patents and copyrights are currently under discussion. A few EU members are weak in some areas, but are quickly bringing these areas up to EU specifications.

Eastern Bloc

The intellectual property situation in the former Warsaw Pact nations is well behind North America and Western Europe in the protection of intellectual property. For example, Hungary is somewhat behind in the protection of patents and copyrights. It has signed an agreement with the United States regarding intellectual property protection, but has yet to come into complete cooperation.³¹ Poland has made significant progress, however, it remains weak. Poland's pirated music industry has increased over the past few years, with a record 45 percent market share of the Polish music industry in 1998, up from 25 percent in 1997.³² However, a few countries in the region are up to standards, as both Bulgaria and Romania have enacted legislation recently that is consistent with the rest of the industrialized world.^{33,34}

Sub-Saharan Africa

In Sub-Saharan Africa, piracy is widespread. Most countries do not recognize intellectual property in any shape or form. However, three countries are addressing intellectual property issues. These countries are Ghana, Nigeria, and South Africa. Ghana has strict regulations based on British law.³⁵ Nigeria is stricken with high piracy rates and few regulations. However, they are in the process of strengthening their laws.³⁶ South Africa is ahead of the rest of Sub-Saharan Africa in the protection of intellectual property.³⁷ Their laws are up to standards, yet piracy remains. Forty eight percent of all software sold in South

Africa is pirated, yet this rate is much better than any other country in the region.³⁸

The U.S. Information Agency provides intellectual property workshops in Africa. The goal of these workshops is to encourage enacting of intellectual property rights statutes in the future.³⁹ Also, the U.S. Trade Representative Administration is attempting to improve the investment climate in Africa through education workshops.⁴⁰ These workshops have taken place in more than a dozen African nations.

Northern Africa and the Middle East

Intellectual property protection in the Northern Africa/Middle East region as a whole is inadequate. Most countries are addressing the issue, but to date most regulations are largely inadequate. Piracy is highly widespread throughout the region, yet some efforts are being made to change the current situation. Piracy in Egypt and Israel has increased over recent years as enforcement of current regulations has been lax.^{41,42} However, they are attempting to remedy the situation. Laws in the region are antiquated, yet most countries are making at least marginal efforts to enact new and stricter laws. One exception to this trend is Syria. Syria has marginal intellectual property laws, yet refuses to recognize copyrights.⁴³ The country in the region with the lowest piracy rate is the United Arab Emirates.⁴⁴

South Asia

South Asia is particularly uniform in its intellectual property laws. They all have outdated laws that need to be revised or replaced. India, Pakistan, and Bangladesh all are making efforts towards stiffer intellectual property protection, but have yet to satisfy the United States and other major industrialized nations.^{45,46,47} One exception is that India's trademark protection is considered good.

Southeast Asia

The Southeast Asian region has two major regional economic cooperations. Both are committed to protecting intellectual property. The first is the Association of Southeast Asian Nations (ASEAN). Comprising various nations in southeast Asia, ASEAN has outlined an action plan that includes not only bringing member nations into compliance, but also involves education and cooperation among member nations and those outside the agreement.⁴⁸

The other major economic agreement is APEC, which is the basis of this paper. Like ASEAN, APEC has a multi-prong approach to intellectual property, and feels that education is at the core of cooperation.

Based on the foregoing regional reports, the overall global picture of intellectual property is favorable. Advanced regions have taken or are taking action to ensure that intellectual property is respected. Emerging nations are also making gains in protection. Third-world nations are far behind, but

advanced countries such as the United States are aiding these nations in both intellectual property education and protection.

The positive overall view of intellectual property protection is encouraging to corporations who do business internationally. However, the scope of this paper is much narrower. Focusing on Asia and APEC more specifically, this essay will highlight current trends in the region and illustrate what countries are doing to protect intellectual property.

Chapter Four - The Asia-Pacific Region and APEC

The Asia-Pacific region is a major player in international trade. As previously stated, there is a cooperative arrangement to help facilitate trade within the region.

Table 1-Trade Volume

Trade Volume of APEC with Member Nations vs. World (in Billions of U.S. dollars)						
	Imports			Exports		
	WORLD	APEC	APEC (%)	WORLD	APEC	APEC (%)
1997	5,469,841	2,399,219	43.862	5,336,735	2,262,995	42.404
1996	5,315,248	2,290,570	43.094	5,172,823	2,117,287	40.930
1995	5,067,838	2,155,430	42.531	4,969,525	2,053,275	41.317
1994	4,262,909	1,861,685	43.671	4,169,257	1,758,142	42.169
1993	3,735,620	1,610,292	43.106	3,651,985	1,542,339	42.232
1992	3,795,039	1,474,597	38.855	3,661,440	1,441,667	39.374
1991	3,540,643	1,359,791	38.405	3,418,026	1,323,660	38.725
1990	3,556,510	1,300,978	36.580	3,425,043	1,214,342	35.454
1989	3,138,044	1,205,431	38.413	3,022,833	1,124,761	37.208

Source: Monthly Bulletin of Statistics, UN, July 1998

Called the Asia-Pacific Economic Cooperation, APEC is an international economic agreement spanning North America, Australia, and major portions of Asia, South America, and Oceania. Trade in APEC accounts for over 43 percent of total global trade volume.⁴⁹ This international trade alliance was created as an informal organization intended to foster dialogue on economic cooperation and liberalization among the Pacific Basin countries.⁵⁰ As evidenced in the above table, APEC is a major player in the global economy. The left three columns

(excluding the year column) illustrate import trade volume of APEC members versus the rest of the world, and the right three columns represent export trade volume versus the rest of the world. The world column contains import/export volume of the entire world, and the APEC column indicates import/export volume of the members of APEC, all in United States dollars. The APEC % column shows what percentage of global volume is from the APEC nations. For example, in 1997, total global import volume was \$5.5 million and APEC global import volume was \$2.4 million, resulting in an APEC % of approximately 43.9 percent. Restated, in 1998, APEC nations accounted for 43.9 percent of the world's imports.

The activities of the various APEC committees and working groups listed below aim to promote regional economic growth and cooperation and build an Asia-Pacific community.⁵¹ They pursue this goal through activities in three inter-related areas.

Trade and Investment Liberalization - First, APEC groups are working to achieve trade and investment liberalization, the reduction and removal of formal barriers to trade, such as tariffs, and restrictions on foreign investment.⁵² In addition, as tariffs are reduced, APEC is giving increasing attention to non-tariff barriers to trade. An agreement has been made to achieve free trade and investment in the Asia-Pacific region by 2010 for developed member economies and 2020 for developing members.⁵³ APEC members believe that reducing trade barriers will help expand output and trade and thereby improve the welfare of the vast majority of people in all economies.

Trade and investment liberalization in APEC occurs on a voluntary basis. Member economies take action on a unilateral basis via annual updates of their so-called Individual Action Plans. This remains APEC's main channel for trade liberalization.

Business Facilitation - APEC's second pillar, business facilitation, includes a variety of steps economies are taking to make it easier to do business in the region.⁵⁴ This includes things like simplifying and harmonizing the various members' customs procedures, mutual recognition of testing authorities for meeting industrial product standards, promoting investment by strengthening protection of intellectual property rights, and easing restrictions on regional travel by business people. Studies show that business facilitation holds great scope for expanding regional output and trade and thus providing benefits to consumers, workers and producers alike.⁵⁵

Economic and Technical Cooperation (Ecotech) - The third pillar, economic and technical cooperation, or "ecotech," covers a variety of capacity-building activities conducted by APEC bodies.⁵⁶ These are aimed at enhancing each member's, especially each developing member's, ability to benefit from the liberalization agenda and reducing disparities within the diverse APEC region. APEC Ministers have directed that ecotech work should focus on six priority areas: developing human resources, establishing stable capital markets, building economic infrastructure, harnessing technologies of the future, promoting environmentally sound growth, and strengthening small and medium-sized enterprises.⁵⁷

The previous and following tables both illustrate the importance of APEC in the global climate. Table 1 shows APEC's percentage of imports and exports in the global economy from years 1989-1997. In that time period, APEC's share

has risen from 38 percent to approximately 43 percent. Table 2 (at the end of the chapter) ranks the world's top twenty leading importers and exporters for 1998. APEC nations on the table are indicated in bold. It is similar to table 1, yet the figures are broken down on a country-by-country basis. For instance, the United States exported \$683 billion in 1998, representing a 12.7 percent share of all goods exported for that year. On the import side, the United States imported \$944.6 billion in 1998, representing a 17 percent share of all goods imported that year.

According to the table, APEC had 14 of the top 20 exporters (70 percent) and 13 of the top 20 importers (65 percent), for the year 1998.

The tables in this chapter illustrate the importance of APEC to the global economy. Because of its importance, APEC requires its member nations to abide by a number of treaties and agreements. These treaties attempt to create some uniformity between all members and are discussed in the next chapter.

Table 2-Global Trade Volume

Leading exporters and importers in world merchandise trade, 1998
(Billions of dollars and percentage)

Rank	EXPORTERS	Value	Share	Rank	IMPORTERS	Value	Share
1	United States	683.0	12.7	1	United States	944.6	17.0
2	Germany	539.7	10.0	2	Germany	466.6	8.4
3	Japan	388.0	7.2	3	United Kingdom	316.1	5.7
4	France	307.0	5.7	4	France	287.2	5.2
5	United Kingdom	272.7	5.1	5	Japan	280.5	5.0
6	Italy	240.9	4.5	6	Italy	214.0	3.8
7	Canada	214.3	4.0	7	Canada	205.0	3.7
8	Netherlands	198.2	3.7	8	Hong Kong, China	188.7	3.4
9	China	183.8	3.4		<i>retained imports^a</i>	38.9	0.7
10	Hong Kong, China	174.1	3.2	9	Netherlands	184.1	3.3
	<i>Domestic exports</i>	24.3	0.5	10	Belgium-Luxembourg	158.8	2.9
11	Belgium-Luxembourg	171.7	3.2	11	China	140.2	2.5
12	Korea, Rep. of	133.2	2.5	12	Spain	132.8	2.4
13	Mexico	117.5	2.2	13	Mexico	128.9	2.3
14	Chinese Taipei	109.9	2.0	14	Chinese Taipei	104.2	1.9
15	Singapore	109.8	2.0	15	Singapore	101.5	1.6
	<i>Domestic exports</i>	63.3	1.2		<i>retained imports^a</i>	54.9	1.8
16	Spain	109.0	2.0	16	Korea, Rep. of	93.3	1.7
17	Sweden	84.5	1.6	17	Switzerland	80.0	1.4
18	Switzerland	78.7	1.5	18	Austria	68.3	1.2
19	Malaysia	73.3	1.4	19	Sweden	67.6	1.2
20	Ireland	63.3	1.2	20	Australia	64.7	1.2
21	Austria	61.7	1.1	21	Brazil	61.0	1.1
22	Russian Fed. ^b	56.2	1.0	22	Malaysia	58.5	1.1
23	Australia	55.9	1.0	23	Poland	48.0	0.9
24	Thailand	53.6	1.0	24	Turkey	46.4	0.8
25	Brazil	51.0	0.9	25	Denmark	45.8	0.8
26	Indonesia	48.8	0.9	26	Russian Fed. ^b	44.7	0.8
27	Denmark	47.0	0.9	27	Ireland	43.7	0.8
28	Finland	42.4	0.8	28	India	42.9	0.8
29	Norway	39.6	0.7	29	Thailand	41.8	0.8
30	Saudi Arabia	38.8	0.7	30	Norway	36.2	0.7
	Total of above^c	4748.0	88.3		Total of above^c	4696.0	84.4
	World^c	5375.0	100.0		World^c	5560.0	100.0

(a) Retained imports are defined as imports less re-exports. (b) Data exclude trade with the Baltic States and the CIS. Including trade with these States would lift Russian exports and imports to \$73.9 billion and \$59.5 billion, respectively. (c) Includes significant re-exports or imports for re-export.

Source: <http://www.wto.org/wto/intltrad/998app1.htm>

Chapter Five - Treaties and Agreements

APEC has taken a number of actions toward protecting intellectual property rights. First of all, APEC tries to enforce previous treaties that are already in existence. Another set of actions involves resolutions put into effect at annual APEC meetings.

There are a number of international treaties that allow for better protection and regulation of intellectual property that APEC tries to enforce and abide by. These treaties include: The Berne Convention for the Protection of Literary and Artistic Works, The Universal Copyright Convention, and The Trade Related Intellectual Property Rights Agreement (TRIPs).⁵⁸

The Berne Convention

The Berne Convention for the Protection of Literary and Artistic Works (1886) rests on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them.⁵⁹ The three basic principles are the following:

- **principle of national treatment:** Works originating in one of the contracting States must be given the same protection in each of the other contracting States as the latter grants to the works of its own nationals;
- **principle of automatic protection:** Such protection must not be conditional upon compliance with any formality; and
- **principle of independence of protection:** Such protection is independent of the existence of protection in the country of origin of the work

The Convention, concluded in 1886, was revised at Paris in 1896 and at Berlin in 1908, completed at Berne in 1914, revised at Rome in 1928, at Brussels in 1948, at Stockholm in 1967 and at Paris in 1971, and was amended in 1979.⁶⁰

The Universal Copyright Convention

The Universal Copyright Convention (UCC) was adopted in 1952.

Ninety-two countries belong to this convention. Under this treaty, each member state grants the same protection to works of nationals and to works first published in any other member state as it grants to its nationals.⁶¹ This provision applies only to works that were first published outside the country requiring the observance of the formalities and were not authored by one of that country's nationals. Also, formalities such as registration are permitted under UCC to bring an infringement suit.

The Agreement on Trade Related Aspects of Intellectual Property Rights

Finally, there is the Agreement on Trade Related Aspects of Intellectual Property Rights, or TRIPs Agreement for short. In the GATT-TRIPs Agreement signed in 1992, basic international standards of IP protection were laid down - requiring new legislation in many countries. Some nations have until 2006 to pass the new laws, but most must do so before the 2000 deadline.

Of the treaties listed, this is the most recent as well as the most important agreement. This agreement was drawn up at the Uruguay Round, which also

established the World Trade Organization (WTO). The accords prior to the Uruguay Round failed to establish strong minimum standards for different types of intellectual property or to require effective enforcement procedures to remedy violations of foreigners' IPRs.⁶² Therefore, major changes occurred at the Uruguay Round.

The Uruguay Round agreement was the result of a round of negotiations of GATT that was ratified in March of 1994.⁶³ This agreement cut tariffs on imports, abolished quotas, and most importantly, its members agreed to create the WTO.

On the intellectual property subject, the Uruguay Round strengthened IP protections and developed enforcement and dispute settlement procedures. The procedures were to be phased in over a decade, thus the phase-in process is still continuing. However, enforcement has been lax up to this point. Some countries will not sign the agreements. As a general rule, net export countries have signed the agreements, and net importers have not. Net importers do not have much incentive to sign these agreements because they have nothing to protect, whereas net exporters have everything to lose. However, the most important agreement involving intellectual property was established at the Uruguay Round. This agreement was the Trade-Related Intellectual Property Protection agreement, or TRIPs for short.

TRIPs requires members to bring intellectual property rights laws closer to standards found in most Organization for Economic Cooperation and Development (OECD) countries and to provide more effective private and public enforcement mechanisms.⁶⁴ Enforcement provisions call for using improved international dispute settlement procedures under the World Trade Organization.⁶⁵ Basically, the TRIPs Agreement is a minimum standards agreement, which allows members to provide more extensive protection of intellectual property if they so wish.⁶⁶

There are three main aspects of the TRIPs Agreement. First of all, the agreement sets standards. These are minimum standards of protection to be followed by each member nation.⁶⁷ The second feature of the TRIPs Agreement is that of enforcement. According to the World Trade Organization (WTO), the second set of guidelines concerns domestic procedures and remedies for the enforcement of IPR. Some general principles that are applicable to all IPR enforcement procedures are laid out here. In addition, it contains provisions on civil and administrative procedures and remedies, provisional measures, and special requirements related to border measures and criminal procedures, which specify the procedures and remedies that must be available so that right holders can effectively enforce their rights.⁶⁸ Finally, also outlined by the WTO, the third feature of the TRIPs Agreement provides for dispute settlement. Disputes

between WTO members about the respect of TRIPs obligations are subject to the WTO's dispute settlement procedures.⁶⁹

Table 3-1995 Osaka APEC Meeting

IPR Liberalization Actions Pledged At 1995 Osaka APEC Meeting⁴⁰	
Member	Initial IPR Action
Australia	None
Brunei	Amending Trade Marks Act, drafting copyright legislation, and reviewing patent system to ensure compliance with the TRIPS Agreement
Canada	None
Chile	None
Hong Kong	Accelerate implementation of the TRIPS Agreement by 1996
Indonesia	None
Japan	Implement a major portion of the TRIPS Agreement before the agreed date (January 1, 1996). To facilitate international trade in seeds and seedlings, Japan will provide aid to contribute to the establishment and extension of plant variety systems in nations where such systems have not been fully established
Korea	Proposed amendments to 9 IPR laws to National Assembly to speed implementation of TRIPS Agreement
Malaysia	None
Mexico	None
New Zealand	TRIPS Agreement was implemented one year ahead of schedule
Papua New Guinea	Assessing possibilities for establishing IPRs
Philippines	None
Singapore	Immediate effectiveness of new copyright legislation with respect to performers' right in accordance with TRIPS Agreement. Government is in the final stages of approving a bill to set up an Intellectual Property and International Trade Court.
USA	TRIPS Agreement to be fully implemented on January 1, 1996 (as required by TRIPS).
Taiwan	None

In 1995 at the Osaka APEC summit, member nations put forth a statement

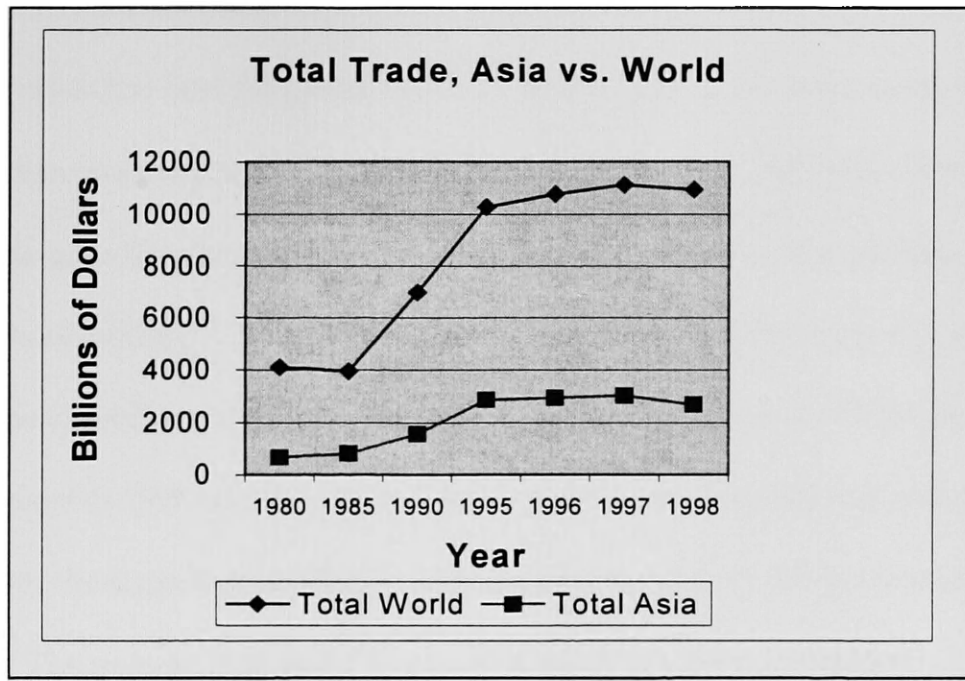
pledging initial actions to be taken to protect intellectual property rights.⁷⁰ Some members pledged to abide by the timeline set forth, yet others pledged to a schedule that exceeds the timeline. Some countries such as Australia and Mexico pledged nothing at the Osaka meeting. Other countries such as Brunei and Singapore pledged to update their intellectual property laws. Papua New Guinea agreed to look into establishing intellectual property legislation, as none existed in the past. And countries such as the United States and New Zealand pledged to exceed the TRIPs guidelines.

The countries in APEC are at different stages of intellectual property protection, yet all are committed to meeting the standards set forth by the TRIPs Agreement. This chapter reviewed intellectual property in the global economy and its status within the Asia-Pacific Economic Cooperative (APEC). Chapter six addresses a number of additional important issues that relate to the state of intellectual property among APEC countries.

Chapter Six - Other Issues in Intellectual Property

The Asian Crisis

Table 4-Asian Trade Volume



There are other issues involving intellectual property that need to be analyzed. First, to further complicate the issue of intellectual property protection, Asia suffered through an economic currency crisis in 1997 and 1998, as evidenced in the chart above, though it seems to be recovering in 1999. The chart compares the volume of Asian trade to the volume of global trade. As the global economy continued to expand through 1996 and 1997, the Asian economy's growth was relatively flat. In 1998, the world economy started a downward trend, as did Asia. Since the Asian economy is a major player in the global market, it can be inferred from the chart that Asia's woes helped slow the

world economy. Therefore, this Asian crisis must be taken into account when discussing intellectual property issues.

Because the Asian economy is extremely important to the world, the Asian crisis has hurt the global economy as a whole. As evidenced by Table 4, the Asian economy is a huge player in the world, and as the Asian economy goes, so goes the global economy. The figures on the chart are imports and exports combined.⁷¹ As a result of the Asian crisis, the rate of growth in the volume of world merchandise exports slowed to 3.5 percent in 1998, from over 10 percent in 1997 and the dollar value of world merchandise trade declined by 2 percent, the largest since 1982.⁷² Imports into Asia fell by 8.5 percent in 1998.⁷³

The present currency crisis in Asia has had a profound effect on intellectual property and the protection thereof. As stated previously, the fact that American goods are more expensive has caused an increase in the number of pirated items. Asians can no longer afford the legitimate goods imported from the United States, so individuals begin pirating and selling the merchandise at a considerable discount. This is a huge problem for American exporters. Also, product dumping is a problem. As the Asian markets dry up during a crisis, those markets will attempt to dump large quantities of cheap products in the United States. This pressure to move goods to the United States causes Asian companies to relax their policies regarding US patents.

However, there are some opportunities for exporters in the current currency crisis. Companies can turn to their patents as a source of revenue.⁷⁴ First of all, a company could license its non-core business patents. This would allow for much needed revenue during the cash strapped period. This also avoids additional competition with the company's core businesses. Also, during the crisis, those companies wanting to obtain licenses can do so at rock bottom prices. A company should take steps during the crisis to protect products and processes so that they might prosper in affected regions once the crisis is over. The decision to stop filing patents during the crisis to save money is a foolish one. This is so because patents will outlast any global or regional financial crisis.

Marketing Issues

Also, there are some micro-business issues that affect and are affected by the concept of intellectual property. They all influence marketing strategies of companies who sell products in international markets. Among them are: general marketing, pricing strategies, and an issue related to pricing called price elasticity. These issues are greatly affected by the intellectual property protection policies of a nation.

1.) General Marketing

The protection of intellectual property has a profound effect on a firm's marketing strategy. When going international, a firm has to take into account the

intellectual property protection efforts of a country it plans to enter. If a country's intellectual property policies are ignored, great repercussions are a very real possibility. If a country does not respect intellectual property rights, a firm could lose more than just profits. Issues such as image and branding to name a few are affected by the intellectual property protection (or lack thereof) by a country. When legitimate and illegal products exist together in a market, image and brand identity can be affected. The pirated products are generally more inexpensive than the legitimate ones (both in quality and price), and therefore, a brand can be cheapened by this phenomenon. Consumers see two different prices for what appears to be the same product, not knowing that the cheaper of the two is actually an illegal product. Thus, consumer perception could shift, resulting in damage to the product's image and brand as consumers see the product as cheaper than it really is.

2.) Pricing

Another issue involving intellectual property rights is that of pricing. This falls under the marketing heading, but because it is such a major concern, it will be discussed separately.

The more expensive a product, the greater the likelihood that it will be pirated by foreign entities because the higher the price, the smaller the number of people who are able to purchase the product. This is why computer software is a

lucrative target for illegal reproduction. Firms going international face three different scenarios. First of all, they can enter a risky country with their products at full price and face the danger of pirating. They will have higher revenues per unit, but sales will be fewer because of the high price. Also, pirating has the possibility of being widespread.

Another possibility is to avoid the risky countries altogether. Sales will be reduced because revenues from those markets will be zero. However, the number of illegally copyrighted units could be reduced, thus reducing losses in this way. This strategy could reduce the number of pirated copies, but it may be a fruitless effort as these countries could still receive pirated exports from other countries.

The third strategy is to price goods lower in the risky countries to reduce the possibility of pirating. Unit sales will be higher than the first scenario, and the risk of illegal copying will be lessened as more people would be able to purchase the products legally. However, profit margin per unit sold will also be reduced. Another drawback is that people from advanced nations such as the United States and Canada would have the incentive to purchase goods in a foreign country such as Mexico, as the goods would be cheaper there.

Therefore, a firm has to weigh the costs and benefits of each action, including the consideration of price elasticity of demand and decide what is best

for the firm in a particular country. Not only are present revenues and costs at stake, but also there are the firm's brand name and image that need to be considered.

3.) Price Elasticity of Demand

Along the lines of pricing is the issue of price elasticity of demand.

According to the law of elasticity, the more elastic a good is, the more price sensitive people are. For example, as the prices of automobiles go up or down, the number of people buying automobiles goes up or down by a considerable amount. Therefore, automobiles are an elastic good. Conversely, as the price of medication goes up or down, the change in the number of people buying medication is very small relative to the price change. Thus, medication is considered an inelastic good.

Elasticity is affected by the existence of substitute products on the market. Piracy affects the elasticity of demand by creating more substitute goods in the economy.⁷⁵ Because these pirated goods are illegal, some consumers might not view them as substitute goods, but others will. If illegality does not bother consumers, then the pirated goods are considered perfect substitutes and can be purchased at a much lower price than the legitimate substitute.⁷⁶

The preceding chapters have introduced intellectual property protection and all of the related components. The next chapter highlights the efforts of all

the members of APEC in protecting intellectual property.

Chapter Seven – Current Status of APEC Members’ Intellectual Property Protection

This chapter examines the current state of intellectual property in each member nation of APEC and the effect that APEC has had on each nation. Each nation is examined in detail. Most of the information comes from each nation’s 1998 Individual Action Plan (IAP), a paper submitted each year to APEC by every member highlighting its efforts to protect intellectual property along with many other issues involving international trade.

*Australia*⁷⁷

The Australian Government is committed to providing a strong and effective intellectual property regime consistent with accepted international standards. As a net importer of technology, Australia has determined that these standards, which include the World Trade Organization’s TRIPs Agreement and various WIPO conventions, have received general acceptance and are appropriate for Australia. Australia is active in negotiations to determine new norms for intellectual property protection, including enhancements to existing standards where this is considered necessary.

Australia was fully aligned under TRIPs regulations as of 1 January 1996. Australia has been active in ensuring that its legislation adequately protects intellectual property rights. In April 1998 the Australian Government announced it would introduce legislative amendments to provide greater

copyright protection to meet the challenges of new technology and the on-line environment.⁷⁸ If passed by Parliament, these amendments will:

- create a new technology-neutral, broadly-based right of “communication to the public” which will ensure that owners of copyright are appropriately rewarded for the use of their creations in the new communications environment;
- introduce a statutory license to remunerate copyright owners for the retransmission of broadcasts;
- give telecommunications carriers and internet service providers more certainty about their liability for copyright infringements by others on their facilities;
- introduce sanctions against commercial dealing with devices designed to defeat technological copyright protection measures; and
- introduce sanctions against intentional tampering with information electronically attached to copyright material.

Australia has an excellent intellectual property protection scheme in place.

They are also continuing to improve upon it to ensure their competitiveness in the global marketplace.

*Brunei*⁷⁹

To come under compliance with regards to intellectual property, Brunei has planned to:

- Enact legislation to amend her trademarks and patents legislation to comply with the requirements of the TRIPs Agreement;
- enact specific legislation for the protection and enforcement of copyright and related rights, industrial design and the layout -designs (topographies) of integrated circuits based on the principles outlined in the objective;
- maintain such modernized intellectual property laws and implement changes in response to international trends and new technology; and

- continue to take appropriate steps to enforce criminal remedies.

Therefore, it appears that Brunei is taking adequate steps to help ensure that intellectual property rights of foreigners are respected. However, these efforts are just the beginning of intellectual property protection.

*Canada*⁸⁰

Canada's TRIPs implementation became complete with the 1 January 1996 effective date of the intellectual property provisions of Canada's *WTO Agreement Implementation Act*. Canada maintains TRIPs-consistent regimes with respect to copyrights, trademarks, and patents, just to name a few. In accordance with the TRIPs Agreement, all rights are provided to WTO members according to national treatment and most-favored-nation principles.

Canada's enforcement of intellectual property rights is fully consistent with TRIPs requirements and will continue to participate in working groups and negotiations to develop new international norms for intellectual property, in WIPO and other bodies. Canada will also continue its active participation in the WTO Council for TRIPs, including review of TRIPs provisions on geographical indications, protection of life forms, and of TRIPs implementation.

Canada's intellectual property protection policies are very advanced and well above the average APEC member. In fact, their protection is on line with the United States and Japan.

*Chile*⁸¹

Chile has a highly developed system for the protection of intellectual property rights and in its corresponding use by the private sector. Except for minor adjustments that are required, Chilean intellectual property legislation is in line with the TRIPs Agreement, and recent international comparative studies have demonstrated that the protection of intellectual property rights in Chile is adequate to develop trade and investment flows. The Chile-Mexico Free Trade Agreement includes a chapter on Intellectual Property that establishes disciplines in copyright, trademarks and geographical indications. The Ministry of Economy and the European Commission signed a cooperation agreement aimed at the modernization of the Industrial Property Department.

Chile has also instituted short, medium, and long term plans to aid in the protection of intellectual property rights. These efforts show that Chile is the most economically advanced nation in South America.

*China*⁸²

China regards protection of intellectual property rights as an important component of its reform and open policies and legal construction, essential for this huge market to thrive in the global economy. Ever since the late 70s, while carrying on legislative process for IPR protection, China has engaged actively in activities of related international organizations and strengthened cooperation and exchange with other countries in the field of IPR protection. Although China

has a relatively new IPR system, it started at a vantage point with accelerated legislative efforts. Today, a fairly complex IPR protection structure is established in China.

In China, a citizen or legal person may file a suit with the People's Court according to law when his or her intellectual property rights are violated. In addition, given the highly technical nature and special expertise involved in handling IPR cases, China has set up special IPR courts within the People's Court system in Beijing, Shanghai and other places since 1992. Criminal responsibilities will be pursued where the violation constitutes a crime. Such administrative means are provided in China's IPR laws including the Patent Law, the Trademark Law and the Copyright Law.

Patent law in China allows provinces and coastal cities to establish patent administrative authorities. For the benefit of effective enforcement of the Copyright Law, the Chinese government set up a National Copyright Agency; and copyright authorities were created across provinces, autonomous regions, municipalities, and other major cities. As stipulated in the Trademark Law, all trademarks are registered at the central level and managed by local authorities according to the administrative grading. The IPR rightholders have access to means to seek protection. China has also set up border protection and customs offices across the country to further help protect intellectual property.

By 30 June 1998, China National Patent Agency had received 800,369

patent applications and approved 38,818 of them, making it one of the larger patent authorities of the world. It is estimated that at the end of 1997, there were 670,000 effective trademarks registered with China National Trademark Office, an outstanding figure in terms of registration records of all countries of the world. Between 1995 and the end of 1996, the administrative agencies handled 4800 cases for voluntary registration of works, while between 1992 to July 1997, China Software Registration Center approved 2,275 registrations. Moreover, the State Patent Administration has accredited 3,709 foreign-related audiovisual products and accredited 288 computer software items between September 1996 and the end of 1997. The statistics also show that the patent authority dealt with 3,400 cases of copyright-tort and confiscated over 24,000,000 pirate products, between 1995 and 1997.

By the end of June 1996, the People's Court system had handled over 20,000 IPR-related cases, which were closed within an average period of one year. IPR administrative authorities had received over 20,000 IPR-related disputes. The customs authorities investigated and closed 1,940 IPR-related cases, of which 98% were processed on an ex officio basis. IPR violation in China is now under firm control." This goes to show that China has made efforts towards protecting intellectual property. How true these efforts are is undetermined at this point. If these efforts are indeed genuine, China is striving to be a major player in the global economy.

China is taking steps to be a major protector of intellectual property.

Their efforts are great, yet China is still far behind compared to the rest of APEC.

*Hong Kong*⁸³

Hong Kong, China has an established legal framework for the protection of intellectual property. The specific intellectual property laws and the judicial system provide for the method of protection and enforcement of these rights. Hong Kong, China has specific legislation and, as appropriate, administrative systems for the protection of patents, trademarks, copyright, registered designs and the layout-designs (topographies) of integrated circuits. In addition to civil remedies, criminal sanctions may be available with respect to copyright infringement and counterfeit trademarks. The Paris Convention for the protection of industrial property, the Berne Convention for the protection of literary and artistic works (Brussels Act), the Universal Copyright Convention, the Phonograms Convention and the Patent Cooperation Treaty are all extended and applied to Hong Kong, China.

Hong Kong has also modernized its legislative and administrative systems for copyright, patents and registered designs. Their intellectual property legal framework is fully compatible with all obligations under the TRIPs Agreement since December 1996, three years ahead of the year 2000 deadline.

Hong Kong is above average in their intellectual property protection and could be considered a fairly safe country to export products to.

*Indonesia*⁸⁴

To ensure that intellectual property rights are granted expeditiously, Indonesia has amended the Copyright Law, Patent Law, and Trademark Law, and incorporated special requirements related to border measures in the Customs Law of 1995. Currently, Indonesia is preparing new laws on industrial design, integrated circuits, and undisclosed information and plant variety protection. Furthermore, Indonesia has ratified the Paris Convention, Convention Establishing the WIPO, Patent Cooperation Treaty and Regulation under the PCT, Trademark Law Treaty, Bern Convention, and WIPO Copyright Treaty.

In the short-term, Indonesia is committed to strengthening the administrative system and enhancing technical cooperation in the field of intellectual property rights as well as exploring ways and means to grant protection in a more expeditious manner. In the medium and long terms, Indonesia will improve the protection, awareness and training program with a view of achieving the implementation of a modern and effective intellectual property rights system.

Indonesia has also developed an enforcement framework to strengthen the protection of intellectual property within the country.

- Systematic measures have been carried out to enhance the effectiveness of enforcement, including among others, the establishment of a special task force to combat piracy.

- A series of workshops, seminars, and training have been undertaken throughout the country since 1987 to improve awareness and understanding of IPR among law apparatus, business and industry societies, law practitioners and academia. In particular, series of specialized IPR training programs for enforcement agencies (Judges, Public Prosecutors, Police, Customs Officer) have been conducted under the Indonesia - Australia cooperation scheme. The programs also cover training for law lecturers to enable them to offer IPR courses in law schools in Indonesia.
- The Government encourages the private sector to establish associations, organizations and other professional undertakings in the field of IPR.

Indonesia has developed adequate intellectual property protection guidelines and procedures, but these efforts may be undermined by the current political crisis in the region.

*Japan*⁸⁵

Japan's intellectual property rights protection system has a history tracing back over 100 years. Japan has been updating the system as appropriate to meet the changing needs and has been working to enhance the levels of protection for intellectual property. Envisioning the turn of the millennium, Japan released in April 1998 a vision of "Patent Policies for 2005" to strengthen the industrial property policies. With a view to more user-friendly industrial property administration, Japan also released " Japanese Patent Office User-friendly public services". In recent years, Japan has actively worked to provide technical assistance to other APEC members, and will further develop these activities in the medium and long term. Japan provides adequate, effective and

comprehensive protections for intellectual property rights under the Patent Law, the Utility Model Law, the Trademark Law, the Designs Law, the Copyright Law, and the Seeds and Seedlings Law.

Japan's legislation relating to intellectual property rights provides for appropriate and effective civil and administrative procedures against infringement of intellectual property rights. Japan has an appeal system for industrial property rights, with the Department of Appeal of the Japanese Patent Office dealing with the validity of rights. The system is of a standard of high reliability. Personnel increases within the government have been implemented to achieve even greater reliability. Japan amended the industrial property laws to lessen the burden of proving damages caused by infringement and to strengthen penalties. Japan amended the Copyright Law in 1996 to increase the amount of fine for infringement of copyright and to allow the court of justice to order defendants to submit relevant documents for damage assessment. Further discussion is being held to amend the Copyright Law to increase the amount of fine for infringement of copyright committed by a corporate body. Border measures to prevent infringement of intellectual property rights have been implemented under the Customs Tariff Law. These measures were strengthened beginning in January 1995, under the TRIPs Agreement, following amendment to the Customs Tariff Law.

Along with Canada and the United States, Japan is a world leader in the

protection of intellectual property rights.

*Korea*⁸⁶

The Korean Government has established and maintained sophisticated legal framework and administrative procedures on intellectual property to ensure adequate and effective protection of intellectual property rights on par with those of developed countries in compliance with well-established international norms and principles. The Korean Government has strengthened its administrative organizations, increased staff size, and computerized IPR-related administrative departments to ensure that intellectual property rights are granted expeditiously.

Korea has added new provisions to its Korean Trademark Act to bring the country's intellectual property law into compliance with the TRIPs agreement.⁸⁷ The new law became effective 1 January 1996, and creates a color trademark system, and adopts guidelines on parallel imports established by the Fair Trade Commission. The law also addresses patents, copyrights, computer programs and plant varieties.

The Korean Government also provides an effective enforcement system for the protection of intellectual property rights. This enforcement system includes civil and administrative procedures, remedies against the infringement of intellectual property rights and border measures.

All of the efforts listed above illustrate that Korea is taking steps to allow

intellectual property to be a non-issue in Korea.

Malaysia⁸⁸

Malaysia's commitment towards implementing TRIPs fully by 1999 is making good progress. The enactment of the Performer's Act and a law to protect layout designs of integrated circuits as well as amendments to the Patents Act, the Trade Marks Act and the Customs Act are going on as scheduled. To protect intellectual property, they have implemented short, medium, and long term plans that will be phased in over an undefined extended time period, but have not yet committed to a final date.

Malaysia's efforts at protecting intellectual property are considered below average, but are improving.

Mexico⁸⁹

In the past, Latin America took a protectionist stance that was hostile to intellectual property rights.⁹⁰ The situation has changed greatly largely due to Mexico's adherence to the TRIPs Agreement.

The Law on Promotion and Protection of Industrial Property promulgated in 1991 highly increased the protection of intellectual property. Also, administrative procedures were improved and simplified. Mexico updated its legal and institutional property system in 1994, consistent with its international commitments. Accordingly, the 1991 Law was modified and its amendments came into force on 1 October 1994. These amendments aimed to harmonize the

Mexican legislation with the TRIPs Agreement, and to consolidate the role of the IMPI as the administrative authority to process and grant industrial property rights and to sanction infringements. The Industrial Property Law as amended in 1994, incorporates provisions allowing the authority to adopt effective action against any act of infringement, including expeditious remedies to prevent them and remedies to deter further violations to such rights.

Mexico is making efforts to protect intellectual property. Though considered below average, Mexico is constantly improving their enforcement and regulation procedures.

*New Zealand*⁹¹

New Zealand has undertaken substantial consultations on existing legislation with the goal of finalizing trademark reform during 1998/99, and thereby helping to achieve the APEC objective of ensuring the adequate and effective protection of intellectual property rights in the Asia-Pacific region. New Zealand has an established legal framework for the protection of intellectual property rights which includes both dedicated and other legislation associated with the protection, enforcement and/or prevention of abuse of intellectual property rights (including copyright, plant variety rights, patents, trade marks, industrial designs, and layout designs of integrated circuits). New Zealand has met and exceeded its obligations under TRIPs.

The laws relating to patents, trademarks and designs are being reviewed

to meet the needs of business and to take into account technological developments. The New Zealand Intellectual Property Office is also undertaking a process of business and strategic planning to ensure that its objectives are met. As a result of changes to administration and management procedures and the utilization of new technology, the New Zealand Intellectual Property Office has achieved the objective of eliminating the backlog of applications for the grant of patent, trade marks and designs rights, and is now examining applications within five days of filing.

New Zealand is considered average in their protection of intellectual property. Their current efforts are leading them towards being above average.

*Papua New Guinea*⁹²

Papua New Guinea does not have all the necessary laws to protect intellectual property rights with the exception of trademarks, that were enacted in 1980. They are currently evaluating their accession to World Intellectual Property Organization. Internal consultation has commenced between the relevant public and private sector organizations on the establishment of an intellectual property organization. They have instituted short, medium, and long-term goals to get on the same page with the rest of APEC.

*Peru*⁹³

The National Institute for the Defense of Competition and for the Protection of Intellectual Property (INDECOPI) was created in 1992. INDECOPI is a decentralized organization whose function, among others, is to protect competition in the market (defense of competition, unfair competition and consumer protection) and intellectual property (industrial property and copyright). To carry out all its responsibilities, INDECOPI has self-contained administrative and functional structures. The administrative structure is made up of the following bodies: the Board of Directors, the Advisory Board and the General Management. The Functional structure is technically autonomous and is made up of two levels:

- Intellectual property cases (Inventions and New Technology, Trademarks and Copyright) are dealt with in the first instance by the offices. The head of each office is appointed for an undefined time period;
- The Court for the Protection of Free Competition and Intellectual Property deals with the processes related to intellectual property in the second and final administrative instance through its Intellectual Property Court.

The Court's decisions are subject to review by the Judicial System before the Civil Chamber of the Supreme Court; this is meant to simplify the trial procedure.

Besides the specific standards in each area which have already been mentioned, the following must be emphasized: In Peru it is possible to obtain

the protection of intellectual property rights at three levels:

- compensation by civil means for the damage caused;
- deprivation of liberty by penal means with sanctions of up to four years imprisonment; and
- administrative sanctions.

The Intellectual Property Court in Peru can impose fines of up to 150 UITs (reference tax unit) for each violation. The Intellectual Property Court in Peru can also decree preventative measures such as confiscation, embargoes, etc. It would therefore be right to affirm that Peru fulfills the requirement of having a normative framework that protects intellectual property. In the case of non-compliance with the administrative sanctions imposed by the offices, it is possible to increase the fine imposed without limit.

Peru's enforcement procedures along with their current guidelines have allowed them to improve their intellectual property laws enough to be considered average. However, they need to keep instituting new laws to ensure that intellectual property rights are safely protected.

Philippines⁹⁴

The Philippines views an effective intellectual property system as a vital tool to encourage domestic creative activity, facilitate technology transfer, attract foreign investments and ensure access for Philippine-made products in the world market. It signed into law, on 6 June 1997, RA 8293 or the Intellectual Property

Code of the Philippines. The new law, which took effect on 1 January 1998, aligns existing laws on patents, trademarks, geographical indications, and copyrights with the WTO TRIPs Agreement; and establishes the Intellectual Property Office (IPO). It likewise strengthens IPR enforcement by increasing criminal penalties for trademark (including unfair competition, and false designation of origin, description or representation), copyright and patent infringement. It also expands the scope of trademark infringement to include acts preparatory to the sale of goods or services bearing the infringing work which attach liability to the offender regardless of whether or not the sale takes place.

To update administrative procedures and meet new trends and developments, the following changes were adopted in the intellectual property regime:

- the first to file system has been adopted replacing the first to invent system, starting with invention patent applications filed under RA 8293;
- the applications for the grant of patent for utility models and industrial designs are no longer subject to substantive examination;
- the requirement of prior use in the Philippines as a condition for filing trademark application has been removed;
- the registration of technology transfer arrangements (TTAs) are no longer required provided the TTAs comply with Sections 86 and 87 of RA 8293; and
- the Computerized Trademark Word Search System was inaugurated on 6 March 1997.

The preceding paragraphs prove that the Philippines have been diligent in

moving towards intellectual property protection. A specific example follows from Billboard⁹⁵:

A SINGAPOREAN HAS BECOME the first foreigner to be convicted in the Philippines of a crime involving intellectual property. David Lim Gee Seng was convicted in absentia on Jan.28 and sentenced to a minimum prison term of six months and fined \$4,200 Singapore (\$2,500), according to court records. His co-conspirator, Filipino Rene Gonzales, was also convicted in absentia on the same charges. Lim reportedly claimed in 1992 that his "supplier" was a Singapore firm named Rainbow Music Productions, which Philippine Assn. of Recording Industries researchers later determined did not exist.

The Philippines are instituting procedures and policies that could be considered adequate. Although they lag behind the average, their current diligence will have them above average in the near future.

*Russia*⁹⁶

Guarantees for intellectual property rights protection are provided for in the Constitution of the Russian Federation. Numerous Russian laws and codes, including the Civil Code of the Russian Federation, and the Federal Law on Copyright and Related Rights, protect intellectual property. The Russian Federation is a party to the main international multilateral agreements on intellectual rights. Rights to objects of copyright and related rights emerge as these objects are created. Rights to objects of industrial property are granted as a result of state registration of these objects. Registration of inventions, useful models, industrial samples, trademarks, service marks and names of goods' place

of origin is implemented by a federal body of executive power dealing with patents and trademarks, known as the Russian Agency on Patents and Trademarks.

Protection of rights to objects of intellectual property is implemented through administrative and court procedures. The Russian Federation grants national treatment to legal and natural persons of the countries that are parties to agreements establishing such a treatment. The Russian Federation provides for protection against unfair competition, including the sphere of intellectual property. Protection against unfair competition in the field of intellectual property can be requested by a legal person provided it produces proofs that its competitor sells goods by the way of illicit use of intellectual property products and means of individualization of economic entities, goods, work performance, and services similarized with them. The Ministry of the Russian Federation for Antimonopoly Policy and Business Support has the right to issue mandatory orders to economic entities and to impose penalties upon them in case of default.

Although Russia has instituted many laws involving the protection of intellectual property rights, this is only a token effort. Written laws mean very little without enforcement procedures to ensure protection.

*Singapore*⁹⁷

The Control of Manufacture Act (CMA) and Regulations of Imports and Exports Regulations (RIER) were amended to license optical disc manufacturers

and control the imports of optical media production and master equipment respectively on 17 April 1998. Singapore is among the few countries in the world to have introduced such controls. The CMA amendment adds Compact Discs (CDs), Video Compact Discs (VCDs), CD-ROMS, DVDs and DVD-ROMs as controlled items. Manufacturers would only be permitted to manufacture these items if they apply for, and receive, approval from the EDB, who will assess their application. The RIER amendments would ensure that no unauthorized manufacturers will be able to obtain mastering and manufacturing equipment to manufacture optical discs. Neither will a registered manufacturer be permitted to transfer the equipment to an unlicensed manufacturer. Copyright legislation is in line with the TRIPs Agreement. Some of the more significant provisions that have been introduced include (a) allowing the seizure of documents if they are evidence of copyright offenses and (b) widening the current provision that it is a criminal offence to possess equipment that is used to make infringing copies of sound recordings and audio-visual productions to include the possession of equipment used to make infringing copies of any copyright materials.

Singapore has adopted both legal and enforcement measures aimed at enhancing its intellectual property regime. The measures introduced include the following:

- The Films and Publications Department (FPD) has imposed new film license conditions which require a video company, when submitting imported or locally produced video tapes/discs for censorship, to make a statutory declaration that they hold the copyright or have imported/made the products

with the consent of the copyright holders or that the products in concern are parallel imports. The FPD has also installed a cross-pulse monitor to detect pirated videotapes submitted for censorship;

- In February 1995, a dedicated Police IPR Warrant Unit was established in the Criminal Investigation Department. The Unit centralizes and speeds up the execution of search warrants, thus assisting IPR enforcement officers to secure the needed evidence for prosecution; and
- Backing these improved enforcement measures are the continued imposition of stiff penalties for copyright and trademark infringements by the courts. For example, in April 1998, a software retailer was fined S\$1.51 million for selling pirated software.

Singapore is a signatory to the ASEAN Framework Agreement on Intellectual Property Cooperation. The Agreement's objective is to foster closer cooperation in the field of intellectual property among the ASEAN nations. Specifically, the Agreement provides the basis for cooperative activities in several areas of intellectual property, including:

- Enforcement and protection of intellectual property;
- Strengthening of intellectual property administration through automation and the creation of an ASEAN database on the guidelines and registration requirements of the various countries' intellectual property legislation;
- Human resource development;
- Promoting public awareness; and
- Promoting private sector involvement.

A key provision of the Agreement is the possibility of the establishment of regional patents and trademarks systems and offices. The intention here is to streamline the procedures involved in protecting these forms of intellectual

property within ASEAN so as to facilitate and encourage research and development in member countries and the transfer of technology both within ASEAN and from outside the region. Singapore also organized a seminar for the Asia and Pacific Region on "Internet and the protection of IPR" together with WIPO. The seminar was held from 28 April 1998 to 30 April 1998. The seminar discussed, *inter alia*, the impact of Internet on the existing IP system and the possible forms of IPR infringement on the Internet.

Singapore is average in their protection of intellectual property rights. With the enactment of some new laws, they should be above average within a few years.

*Taiwan*⁹⁸

Over the past few years, Taiwan (Chinese Taipei) has largely improved protection of intellectual property rights (IPR). The United States recognized Taiwan's achievements and took it off their "watch list" in November 1996. In line with WTO accession, Taiwan has made a commitment to revise its IPR law regulations consistent with the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). To date, Taiwan has completed the revision of most of its IPR regulations.

Despite the fact that Taiwan is not yet a WTO member, it has made extensive efforts for more than a decade to provide IPR protection compatible with international standards. Taiwan's current legislation not only covers

traditional IPR protection areas, such as protection of copyrights, trademarks, and patents, but also extends protection to layout-designs of integrated circuits and trade secrets. In fact, Taiwan has already launched an export monitoring system to prevent free circulation of pirated computer software before the TRIPs Agreement formally adopted any border measure provisions.

In the future, Taiwan will continue its extensive efforts in IPR protection and fully implement the TRIPs Agreement when it becomes a WTO member. The IPR granting procedures will continue to be simplified through computerization. The civil, criminal and administrative procedures and remedies for IPR infringement will be reviewed frequently to ensure their adequacy and effectiveness. In the long run, Taiwan will also seek the opportunity to conduct bilateral technical cooperation with other APEC economies along with continuous domestic public education and promotion campaign for IPR protection.

Taiwan is behind in its protection of intellectual property rights, and needs to expedite their protection efforts in order to be competitive in the global economy.

Thailand⁹⁹

As a WTO member, The Royal Thai Government (RTG) is amending and enacting its laws and regulations to provide sufficient IP protection in accordance with the TRIPs standards. Bills revising the Patent and Trademark Acts were

approved in 1998. The laws to be enacted in the near future include the protection of plant varieties, trade secrets, geographical indication and integrated circuits.

The Bill establishing the Intellectual Property and International Trade Court came into force on 26 October 1996. It provides several special features as to the authority and procedures of the Court and qualification of the judges. The Court started its operations on 1 December 1997. Meanwhile, the RTG is also strengthening IP cooperation, both bilaterally and multilaterally, especially between ASEAN and the Maekhong River Basin countries. In 1998, a committee was established to help strengthen the suppression of IP infringement. Also in July 1998, the Working Group on the Coordination and Monitor of the Suppression of IPR Violation was established to coordinate and monitor the operation of Thai law enforcement agencies.

Thailand is similar to Taiwan in its protection of intellectual property rights. Investment there will be considered risky until laws are well established and enforceable.

United States¹⁰⁰

The United States delivers one of the highest levels of intellectual property protection in the world. Its grant of significant intellectual property rights and an effective mechanism by which to enforce those rights have been fundamental components of its economic success and will continue to be critically important to its economic prospects. This high level of protection has also served to enrich

greatly the standard of living and cultural life of American citizens. The United States is a signatory to most of the major international intellectual property agreements.

The United States is a member of the World Trade Organization, and thus subject to the terms of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), and is a member of the North American Free Trade Agreement, Chapter 17 of which contains significant provisions on the protection of intellectual property.

The U.S. legal system complies with each of these agreements, and provides levels of protection that in many respects goes beyond them. Specifically, the United States prohibits parallel importation, provides national treatment under its copyright law to subject matter beyond that required by the Berne Convention, provides a significantly longer term of protection for copyrighted works and sound recordings than specified in agreements, and provides for patent term restoration to compensate for delays in obtaining Federal pre-marketing regulatory approval. Parallel importation is a situation in which genuine goods are imported by someone other than the importer or distributor authorized by the manufacturer.¹⁰¹ Concern comes from the fact that consumers may incorrectly believe the authorized distributor will be able or willing to repair defective goods that have been imported in a parallel fashion. Further, with a range of people importing the genuine product, it will be far

harder to identify counterfeit products.

The United States also ensures that economic rights in copyright can be freely and separately transferred by contract, that strong protection is granted to encrypted program-carrying satellite signals, that patent compulsory licenses can be granted only in rare circumstances, and that layout designs cannot be subject to compulsory licenses. The United States is also subject to a strong national treatment obligation under the terms of NAFTA.

On 1 October 1998, Vice President Gore announced the issuance of a new executive order directing Federal Departments and Agencies to prevent and combat software piracy. The president has also directed the United States Trade Representative (USTR) to undertake an initiative over the next 12 months to press foreign governments to enact similar protections. Working closely with software companies, the US will seek to persuade other governments to modernize their software systems, to assess software use through comprehensive audits, and to ensure that procurement practices call for, and budgets provide for acquisitions and use of "legal software." The President's executive order directs agencies to:

- ensure that only authorized computer software is acquired for, and used on, agency computers;
- ensure that agency policies and practices related to copyrights on computer software are adequate;
- prepare an inventory of the software on their computers; and

- develop and maintain adequate record-keeping systems for their computer software.

In addition to the protection noted above, the United States provides protection against parallel importation of goods embodying trademarks, copyrights and patents, a digital audio tape levy system, enhanced border control measures, a digital performance right in sound recordings, patent term extensions to compensate for delays in the regulatory review process for pharmaceuticals, copyright terms in excess of those required under international agreements, and broad protection against unfair competition, including the protection of trade dress, among others.

The United States supports work in APEC and other forums to improve standardization and harmonization of procedures for acquiring and implementing intellectual property rights. In effect, this is a goal in the APEC Intellectual Property Rights Experts Group (IPEG).

The United States is the world leader in the protection of intellectual property rights. They are the benchmark that all other nations in the world should be attempting to emulate.

*Vietnam*¹⁰²

Vietnam commits to apply efficient measures to protect Intellectual Property Rights within the territory of Vietnam and to co-operate actively with other countries and international organizations in protecting Intellectual

Property Rights in international trade. Vietnam has instituted short, medium, and long-term plans that should allow intellectual property rights to be protected. Their efforts are considered sub-par, and well below what is necessary in order to facilitate safe international trade and investment.

Member Nations Summary

In summary, all member nations of APEC have developed and instituted short, medium, and long-range action plans to ensure that the intellectual property rights of foreign nations are respected and protected. In doing so, these nations are encouraging foreign entities to trade with and do business with them because outsiders do not have to worry about protecting their intellectual property as it is already being protected.

However, each country is in a different stage of protection. Japan and the United States for example, are the most advanced in their protection of intellectual property, and companies can be assured that they will receive full credit for their products. On the other hand, countries like Papua New Guinea are making great progress, yet a country cannot be sure that their products will be protected from piracy. Following is a table grading each country's intellectual property protection efforts to date.

Table 5-Member Ratings

Ratings of Current IPR Efforts of Member Nations	
Grade	Member Nations
A	Canada, Japan, United States
A-	Australia
B	Chile, Hong Kong, Indonesia, Korea, New Zealand, Peru, Singapore
B-	Mexico, Philippines
C	China, Malaysia, Russia, Taiwan, Thailand
D	Brunei, Vietnam
F	Papua New Guinea

All countries in APEC are making strides towards the protection of intellectual property rights. However, one cannot be sure as to whether or not the efforts are genuine or a token gesture. Some developing nations continue to be problem countries. Piracy continues to persist and these nations' efforts to stem the problem are either inadequate or misguided. Table 5 is a "report card" of the current state of intellectual property protection of each member of APEC, according to the data compiled in this report by the author. Those nations with the highest levels of protection are Canada, Japan, and the United States, and are rated "A." Australia's efforts are also very good, although not as good as the three listed as an "A." A majority of the nations are listed as a "B," or average. These countries include Chile, Hong Kong, Indonesia, Korea, New Zealand, Peru, and Singapore. Their intellectual property protection efforts are adequate,

but can be improved upon. Mexico and the Philippines are also adequate in their efforts, yet not quite as adequate as those in the "B" category. China, Malaysia, Russia, Taiwan, and Thailand are considered inadequate, but their efforts are encouraging. Therefore, they are listed as "C." Brunei and Vietnam are considered highly inadequate, and receive a grade of "D." Papua New Guinea is also very inadequate, considerable more so than Brunei and Vietnam, and therefore, receive an "F."

Inadequate intellectual property laws are often based on the premise that people follow the law. However, this is not the case. Simply laws and regulations that appear on paper and without corresponding enforcement do not offer much protection. Therefore, countries need to align enforcement procedures with intellectual property laws to ensure that rights are protected. Most countries do this, but some do not.

An example of a country that does not provide enforcement guidelines is Russia. Their Individual Action Program (IAP) gives mention of penalties that can be imposed. However, it does not go into much detail, thus leaving room for ambiguity.

Developing countries such as Russia have an incentive to not enforce their intellectual property laws, but the need for laws on the books is necessary to do business with other nations. However, allowing companies to pirate other software to sell for a cheaper price benefits the country as a whole due to the fact

that pirating raises the spending power of consumers. This same problem is evident in many other countries such as China and Mexico.

Advanced countries such as the United States and Japan have thorough enforcement procedures written in law. These detailed laws provide penalties for any violation of intellectual property law. Strong enforcement procedures along with laws on the books serve as an adequate defense against intellectual property rights violations.

The final chapter of this essay sums up the essential issues explained in this paper. Furthermore, it provides recommendations that could help insure the protection of intellectual property rights within APEC.

Chapter Eight - Conclusion & Recommendations

Upon the completion of research and synthesis of the state of intellectual property in the Asia-Pacific region, a few conclusions can be drawn. These conclusions are discussed in detail in this chapter.

First, as we move towards a global economy, international trade becomes increasingly important. As international trade becomes more important, an emphasis on intellectual property is vital for the success of a company or a nation's trade with other countries. Intellectual property ensures that an inventor or creator of a product or service gets his or her just due, not only in monetary terms, but in the form of recognition as well. If international trade proliferates without an increased protection of works and products, dissent between countries could increase and spill over into political issues.

Secondly, the protection of intellectual property moves the global economy towards a free market economy. If intellectual property is not respected or defended, then the global economy will move away from a free market system. The reason is this: when intellectual property is not protected and a country's products are pirated or sold without royalties, that country will eventually begin to pull out of the pirating country's market due to a loss in revenues. When countries refuse to trade with other countries, a step is taken away from a free market system. Therefore, if all countries were to protect intellectual property, then all countries would feel comfortable entering any

market, thus moving towards a free market economy.

When countries in the world refuse to protect intellectual property, citizens of those nations are prevented from enjoying the products of other societies because exporting countries will cut back shipment to the countries that do not respect patents and other intellectual property entities. Pirating attempts to copy products, but in many cases, the illegal reproductions often do not maintain the same quality as the original licensed product. Therefore, members of many nations do not get the opportunity to experience new products in their original, high quality form.

Intellectual property laws allow companies and inventors to feel safe that they will be justly rewarded for their efforts. Therefore, creativity is facilitated. If the world does not protect intellectual property as a whole, creativity is discouraged because the monetary incentive to produce new products is lessened.

Piracy results in a loss of revenues to companies who manufacture and export products legitimately. Also, when products are pirated, it puts substitute products on the open market. Additional substitute products create additional competition in a market. Therefore, to be able to compete, a company must price products lower to increase sales volume. This results in lower unit profits per unit. Therefore, a firm's profits can be reduced as the result of this illegal practice.

These issues are important to APEC, and are at the forefront of the goals of this regional trade organization. The question to be answered is: What should APEC do to help ensure that intellectual property rights are protected? The answer to this question also should be a priority for global institutions like the World Trade Organization and the World Intellectual Property Organization. Developing an overall global policy regarding intellectual property would benefit APEC as well as the world in general.

Education

To bring the world more towards a global market, many countries need to be educated about what intellectual property is, what it means to inventors and sellers, and why pirating is unethical. This could be done in a number of ways.

First, APEC should get more involved with the education of less-developed members. Their focus should be geared toward Brunei, China, Russia, and Singapore, to name a few. APEC works in this area already, but they need to make education, and not regulation, a main goal. Currently, APEC administers treaties involving intellectual property. However, this is not enough. Instead of writing treaties, they should get to the core of this issue, which is education. Allowing people to fully understand the benefits of intellectual property protection would go much farther than just agreeing to respect it.

Also, national governments should be attempting to educate neighboring countries about intellectual property. The United States Trade Representative

Office has recently been doing this in Sub-Saharan Africa with some success. Therefore, APEC should encourage this behavior by their members. By getting the industrialized nations of APEC to educate their neighbors, intellectual property could become a priority of most nations in the region, not of just the most advanced nations. However, the benefits of education may be abstract and a wishful proposition for many underdeveloped countries. But, an attempt at education could be a step in the right direction.

The World Trade Organization and The World Intellectual Property Organization should also get involved with the education of less-developed countries. Education could possibly lead to a proliferation of the knowledge of intellectual property, and this phenomenon would be greatly beneficial to the members of APEC as they do business with countries around the globe.

Incentives

APEC, as well as other trade agreements, and individual countries need to provide real and tangible incentives for compliance. Incentives, such as the lowering of tariffs, would give countries an additional reason to respect intellectual property rights.

Promoting intellectual property rights in this way could foster a pro-IPR sentiment in the region, which would benefit the legitimate owners of intellectual property. This would make countries as well as APEC more attractive to outside investors and businesses that could possibly do business in the region.

Enforcement

A third recommendation is for APEC and the individual countries to strengthen their enforcement procedures for violations of intellectual property laws. As stated earlier, laws on the books are not legitimate if not backed by strong enforcement guidelines. The individual countries should introduce strict penalties for firms and individuals who violate intellectual property laws. These penalties could include monetary fines as well as the loss of business licenses. APEC should impose strong penalties for member countries that are not committed to the protection of intellectual property. Specific reprimands could range from warnings to suspensions to expulsion in the most extreme cases of intellectual property rights violations.

In conclusion, there are a number of things that APEC can do to help protect intellectual property rights. By providing education, incentives, and enforcement measures, APEC can facilitate a regional trade agreement that is friendly to businesses, inventors, and individuals who are involved in international trade.

In summary, the Asia Pacific Economic Cooperative has come a long way in protecting intellectual property rights and in the battle against piracy. However, APEC should not rest in its efforts to ensure that intellectual property rights are protected among its member countries. APEC's efforts are helping lead the world toward a free market economy, one without trade restrictions or tariffs. It is this arrangement that would allow the globe to prosper.

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