

1

Intellectual Property Interoperability in ASEAN
and Beyond*An Integration Model*

Elizabeth Siew-Kuan Ng

1.1 INTRODUCTION

In August 2017, the Association of Southeast Asian Nations (ASEAN) will commemorate its fiftieth anniversary. Established by the five founding member countries of Indonesia, Malaysia, the Philippines, Singapore, and Thailand, it later expanded to encompass Brunei Darussalam, Vietnam, Lao People's Democratic Republic (Lao PDR/Laos), Myanmar, and Cambodia. Bonded together by history, geography, and culture, this diverse ten-member grouping has developed in a peaceful and conciliatory manner, with mutual cooperation and friendship. Safeguarding the independence and sovereignty of its member states, the "ASEAN Way" of regional cooperation entrenches the core principles of consensus and noninterference in the internal affairs of other nations. Holding firmly to these key tenets, ASEAN has elevated regional integration to transform Southeast Asia into a key economic bloc. Significant milestones toward accomplishing its goal of establishing an ASEAN Economic Community (AEC) by 2025 include the launch of the ASEAN Economic Community in 2015¹ and the adoption of the ASEAN Economic Community Blueprint of 2025,² acclaimed by the secretary-general of ASEAN, His Excellency Le Luong

¹ As of 2015, the ASEAN Economic Community comprises the ASEAN Political-Security Community, the ASEAN Economic Community, and the ASEAN Socio-Cultural Community. It was launched on November 22, 2015 at the 27th ASEAN Summit in Kuala Lumpur, Malaysia. See *The Kuala Lumpur Declaration on ASEAN 2025: Forging Ahead Together* (2015), available at www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf.

² ASEAN Economic Community (AEC) Blueprint 2025 was adopted as part of the "Kuala Lumpur Declaration 2025: Forging Ahead Together," which also includes the ASEAN Community Vision 2025, ASEAN Political-Security Community Blueprint 2025, and ASEAN Socio-Cultural Community Blueprint 2025. See *The AEC Blueprint*, available at www.asean.org/wp-content/uploads/images/2015/November/aec-page/AEC-Blueprint-2025-FINAL.pdf and *The Kuala Lumpur Declaration 2025*, available at www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf.

Minh, as the “biggest milestone in the history of evolution and development of ASEAN since its founding in 1967.”³

To complement the advancement of economic competitiveness in its region, one of ASEAN’s central policy focuses is to enhance regional intellectual property cooperation. Cognizant of the vastly different levels of development among its member states, and desiring to give due recognition to these divergences, ASEAN realized that intellectual property integration should not be centered on substantive harmonization, the approach taken by the European Union (at least not for the near term). As Annette Kur highlights, any convergence efforts in the ASEAN context will not be aimed at perfecting harmonization but rather on facilitating and encouraging cross-border trade and investment.⁴ Toward this end, ASEAN has embraced an inclusive supranational intellectual property cooperation framework premised on an interoperability agenda. As Yih San Tan emphasizes, interoperability does not necessarily mean harmonization, but aims at building an intellectual property regime that creators will be able to utilize for overseas market access.⁵ Such an integration model enables nations to move forward collectively at varying paces; it is premised on consensus and noninterference and on respect for the national sovereignty of each nation and support for a member’s use of existing flexibilities in customizing its domestic policy subject to regional and international commitments. For despite the absence of an intellectual property harmonization agenda, all of the ASEAN member states have acceded to the World Trade Organization (WTO)⁶ and are bound by the standards imposed under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), among other international treaties. Still, as Rochelle

.asean.org/wp-content/uploads/images/2015/November/KL-Declaration/ASEAN%202025%20Forging%20Ahead%20Together%20final.pdf.

³ See H. E. Le Luong Minh, *Welcome Remarks by H. E. Le Luong Minh, Secretary-General of ASEAN 2016 ASEAN Day Celebration*, available at www.asean.org/storage/2012/05/SG-Remarks-for-49th-ASEAN-Day-Jakarta-2016-final.pdf.

⁴ See Annette Kur, *The EUIPO Convergence Program Model for ASEAN?*, in ELIZABETH SIEW-KUAN NG & GRAEME AUSTIN (eds.), *INTERNATIONAL INTELLECTUAL PROPERTY AND THE ASEAN WAY: PATHWAYS TO INTEROPERABILITY*, Chapter 15.

⁵ See Tan Yih San, Speech by Mr. Tan Yih San, Chief Executive of IPOS at the NUS Centre for Business and Law (August 15, 2014), available at www.ipos.gov.sg/MediaEvents/Readnews/tabid/873/articleid/290/category/Speeches/parentId/80/year/2014/Default.aspx

⁶ Except for Cambodia, Laos, and Vietnam, all of the other ASEAN member states were also signatories to the General Agreement on Tariffs and Trade (GATT), the multilateral trading system that was replaced by the World Trade Organization (WTO) on January 1, 1995. See the WTO, available at www.wto.org/. For a discussion on TRIPS, see, e.g., DANIEL J. GERVAIS, *THE TRIPS AGREEMENT – DRAFTING HISTORY AND ANALYSIS* (4th ed., 2012).

Dreyfuss and Graeme Dinwoodie compellingly argue, TRIPS reflects a “neofederalist regime” in which member states agree to “operate within an international framework”⁷ but retain considerable discretion to do so.

Building on my earlier study,⁸ this chapter proffers an integration model based on “intellectual property interoperability,” drawing on the experience of ASEAN. First, I begin by briefly reviewing the background of ASEAN diversity and diplomacy based on the ASEAN Way, including insights into the Treaty of Amity and Cooperation in Southeast Asia⁹ (Treaty of Amity). Second, a short analysis of the patent and trademark filing data will be presented to illustrate the diverging levels of intellectual property creation and utilization in the ASEAN region. The chapter then reflects on ASEAN’s inclusive regional cooperation model. Specifically, it highlights the provisions and key aspects of the ASEAN Intellectual Property Action Plan of 2016–2025 to illustrate the pathways of intellectual property interoperability that are being implemented over that timeframe. Third, I ultimately suggest that in a highly integrated but uncertain global economy, a supranational intellectual property interoperability model based on the ASEAN Way may be a plausible way forward. For as Graeme Austin illuminates, intellectual property rights are not ends in themselves but social policy levers that countries can deploy to reflect their visions of the good life.¹⁰

⁷ GRAEME B. DINWOODIE & ROCHELLE C. DREYFUSS, A NEOFEDERALIST VISION OF TRIPS – THE RESILIENCE OF THE INTERNATIONAL INTELLECTUAL PROPERTY REGIME 5 (2012). See also Graeme B. Dinwoodie & Rochelle C. Dreyfuss, *Diversifying without Discriminating: Complying with the Mandates of the TRIPS Agreement*, 13 MICH. TELECOMM. & TECH. L. REV. 445 (2007). These issues are also discussed in detail in a study commissioned by and presented to the WIPO: ELIZABETH SIEW-KUAN NG, EFFECTIVE USE OF PATENT RELATED FLEXIBILITIES AND THEIR IMPLEMENTATION AT THE NATIONAL OR REGIONAL LEVEL IN SELECTED ASIAN COUNTRIES (2011, revised 2013), where the author proffered that some “developing countries in Asia have not fully utilized the policy space afforded by international treaties such as the TRIPS-permitted patent flexibilities . . . [and] urged that due care should be taken to avoid any haste in compelling countries at different levels of development to adopt a ‘one-size fits all’ model if adverse outcomes are to be avoided. On the contrary, a differentiated response may be imperative given the divergence in the social, economic and technological indicators among nations.”

⁸ Elizabeth Siew-Kuan Ng, *ASEAN IP Harmonization: Striking the Delicate Balance*, 25 PACE INT’L. L. REV. 129 (2013). Some of the material in this chapter is based on this earlier work.

⁹ *Treaty of Amity and Cooperation in Southeast Asia Indonesia of February 24, 1976*, available at www.asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976/.

¹⁰ See Graeme Austin, *Cooperation through Conflict of Laws: The Justiciability of Cross-Border Copyright Infringement*, in ELIZABETH SIEW-KUAN NG & GRAEME AUSTIN (eds.), INTERNATIONAL INTELLECTUAL PROPERTY AND THE ASEAN WAY: PATHWAYS TO INTEROPERABILITY, Chapter 8.

1.2 ASEAN AND DIPLOMACY: THE ASEAN WAY

1.2.1 ASEAN: A Brief Overview

ASEAN was founded to represent “the collective will of the nations of South-east Asia to bind themselves together in friendship and cooperation and, through joint efforts and sacrifices, secure for their peoples and for posterity the blessings of peace, freedom and prosperity.”¹¹ Set amidst the tumultuous conflict in the Indochina region at that time, the five founding members of Indonesia, Malaysia, the Philippines, Singapore, and Thailand signed the ASEAN Declaration (known also as the Bangkok Declaration) on August 8, 1967, which aimed at building an inclusive community comprising and belonging to all Southeast Asian nations. As such, membership to the Association was kept open to all states in the region. By 1999, the ASEAN community had expanded into a ten-member grouping including Brunei Darussalam, Vietnam, Lao People’s Democratic Republic (Lao PDR/Laos), Myanmar, and Cambodia. ASEAN functioned on a “totally informal basis”¹² for around forty years until the conclusion of the ASEAN Charter in 2007. Aimed at creating an ASEAN legal and institutional framework by codifying all of its rules, values, and norms,¹³ with a particular focus on conflict resolution mechanisms, the Charter came into force on December 15, 2008. On the international front, all of the ASEAN member states are now members of the WTO, following Laos’s accession in 2013.

Situated on a total land area of around 4.49 million square kilometers in a dynamic part of Southeast Asia, ASEAN is the third most populous region in the world, with approximately 629 million residents. Ranked third in terms of the region’s global market size after China and India, it also has the third largest (and one of the youngest) labor forces in the world, with around 65 percent of its workers under the age of thirty-five years old. More than 90 percent of the companies in ASEAN are small and medium-sized enterprises.¹⁴ In 2015, ASEAN was ranked as the sixth largest economy worldwide and the third largest in Asia. With a robust and vibrant economy generating a gross domestic product (GDP) of US\$2.4 trillion and a GDP per capita (at current prices) of US\$3,867 in 2015, some analysts have predicted that ASEAN could become the

¹¹ ASEAN, *History: The Founding of ASEAN*, available at www.asean.org/asean/about-asean/history/. See generally, LEE YOONG YOONG (ed.), *ASEAN MATTERS! REFLECTING ON THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS* (2011).

¹² WALTER WOON, *THE ASEAN CHARTER: A COMMENTARY* 18 (2016). ¹³ *Id.*

¹⁴ Based on the data of the US Mission to ASEAN on the YSEALI – ASEAN Infographics (March 25, 2016), available at <https://asean.usmission.gov/yseali-asean-infographic-3/>.

fourth largest economy in the world by 2050.¹⁵ In terms of global exports, the ASEAN region accounts for around 7 percent of total exports worldwide and is ranked as the fourth largest exporting region in the world, after the European Union, North America, and China/Hong Kong.¹⁶ Intra-ASEAN foreign direct investment (FDI) in 2015 was ASEAN's highest source of FDI, followed by the European Union, Japan, the United States, and China.¹⁷ Similarly, intra-ASEAN trade in 2015 comprised the largest share of ASEAN's total trade by partner, followed by China, Japan, the European Union, and the United States.¹⁸ With the continued deepening of economic regional integration, intra-ASEAN trade is expected to increase substantially.

Notwithstanding ASEAN's impressive data when viewed as a region, it should not be assumed that ASEAN is a monolithic bloc. In fact, it is composed mainly of developing countries with immense variation in their levels of economic, technological, social, and political development. A few examples may serve to further illuminate this diversity:

- Economic divergence: If we look at the data from 2015, a comparison of the GDP between Indonesia and Laos, for example, reveals a wide gap of around US\$845 billion. Similarly, the GDP per capita (at current prices) for Singapore was more than fifty times higher than for Myanmar and Cambodia, or a differential of more than US\$50,000. Again, if we look at international trade figures,¹⁹ such as those of Thailand and Brunei, there is a disparity of more than US\$400 billion. A similar trend emerges in relation to FDI inflow, with Singapore receiving around US\$60 billion and the Philippines standing at US\$5 billion.²⁰
- Digital divide: Singapore is the only ASEAN nation ranked in the category of "Stand-out Country"²¹ in the Digital Evolution Index 2013. It is

¹⁵ See Vinayak HV, Fraser Thompson, & Oliver Tonby, *Understanding ASEAN: Seven Things You Need to Know* (May 2014), available at www.mckinsey.com/industries/public-sector/our-insights/understanding-asean-seven-things-you-need-to-know. See also Vivian Balakrishnan, Edited Transcript of Keynote Address by Minister for Foreign Affairs Dr. Vivian Balakrishnan at the 3rd South Asia Diaspora Convention, July 18, 2016, available at www.mfa.gov.sg/content/mfa/media_centre/press_room/pr/2016/201607/transcript-of-keynote-address-by-minister-minister-for-foreign-a.printable.html?status=1.

¹⁶ Vinayak et al., *id.* ¹⁷ Based on data from the ASEAN Secretariat. ¹⁸ *Id.*

¹⁹ The ASEAN IMTS Database 2015 figures as of August 30, 2016; See ASEAN website, <http://asean.org/>.

²⁰ The figures include equity, reinvested earnings, and intercompany. They are preliminary as of June 30, 2016. *Id.*

²¹ The Index ranks countries into four trajectory zones: 1. Stand Out: Nations having high digital evolution and strong momentum; 2. Stall Out: Nations with high digital evolution but weak momentum; 3. Break Out: Nations having low digital evolution but strong momentum;

predicted that it will take many years for the other top ASEAN countries to catch up with Singapore's digital evolution. Based on existing benchmarks (assuming no change in policy or innovation) it is projected that the time taken for the top five ASEAN countries to reach Singapore's current level of digital development will be around 13 years for Indonesia; 12 years for the Philippines; 10 years for Vietnam; and 9 years and 8 years for Thailand and Malaysia respectively.²²

- Population variance: Indonesia is the most populous country in ASEAN, with a population of more than 255 million. This is more than 600 times higher than that of Brunei, with a population of slightly more than 417,000; more than 50 times higher than Singapore, with around 5 million; and more than 35 times higher than Laos, with approximately 7 million.²³
- Political distinctiveness: Some ASEAN countries, such as, Singapore, Malaysia, Indonesia, and the Philippines, are democracies. Myanmar, on the other hand, was ruled by a military junta for around fifty years until a civilian government was installed in 2011, followed recently by the country's landmark general election in 2016.²⁴
- Religious diversity: More than 85 percent of Indonesia's population identifies as Muslim; around 80 percent of the Philippines identifies as Catholic; in Thailand and Cambodia more than 95 percent of the population identify as Buddhists²⁵; and in Myanmar there is a mix of Buddhists, Christians, and Muslims.²⁶
- Social/cultural dissimilarities: The ASEAN community comprises diverse cultural groups emphasizing to varying extents differing social values, such as attitudes on communal and inclusive rights. This divergence poses great challenges to ASEAN's intellectual property integration. For example, some social cultures emphasize "commonality" or the belief

4. Watch Out: These nations have low digital evolution and weak momentum. See Tufts University, The Fletcher School of Law and Diplomacy, *The Digital Evolution Index of Fletcher School*, available at www.iadb.org/intal/intalcdi/PE/2016/16259.pdf.

²² See Bhaskar Chakravorti, *Where the Digital Economy Is Moving Fastest* (Summary of a Harvard Business Review Webinar of March 9, 2016), available at www.iadb.org/intal/intalcdi/PE/2016/16259.pdf.

²³ Based on country projection data as of August 2016 from the ASEAN website, *supra* note 19.

²⁴ BBC News, *Myanmar's 2015 Landmark Elections Explained* (December 3, 2015), available at www.bbc.com/news/world-asia-33547036 and BBC News, *Myanmar Opens New Parliament Session after Military Rule* (February 1, 2016), available at www.bbc.com/news/world-asia-35456982.

²⁵ Vinayak et al., *supra* note 15. See also the *Nation Master: Religion – Countries Compared*, available at www.nationmaster.com/country-info/stats/Religion/Religions.

²⁶ Burma Center Prague, *Myanmar Fact Sheet*, available at www.burma-center.org/burma-myanmar-fact-sheet/.

1 *Intellectual Property Interoperability in ASEAN and Beyond*

9

that the creative and innovative outputs should be freely shared as “community property.”²⁷ One example highlighted by Agus Sardjono relates to Indonesia’s batik cultural heritage, which has been viewed as belonging to the Indonesian people as a community for hundreds of years.²⁸ In addition, ASEAN is also confronted by a broad diversity of languages. The ASEAN community converses in more than 12 languages including Malay, English, Khmer, Indonesian, Laos, Mandarin Chinese, Tamil, Myanmar, Filipino, Spanish, Thai, and Vietnamese.²⁹

Despite the immense diversity among its member states, ASEAN has persevered in its goal of enhancing regional integration. The launch of the ASEAN Community 2015 centered on three key pillars³⁰ – Political Security, Economic Community, and Sociocultural Community – marked a significant milestone in demonstrating the Association’s perseverance and resilience in advancing the goals of coming together as one community, to share one vision and forge one identity. Recognizing the importance of sustaining peace in the Southeast Asian region, ASEAN member states remain guided by the ASEAN Way in dealing with intra- and interstate relations. Take, for example, the Declaration on the Conduct of Parties in the South China Sea of 2002 (DOC) signed by the ASEAN member states and the People’s Republic of China and the Code of Conduct in the South China Sea (COC), which inter alia sought to promote self-restraint, maritime cooperation, and the peaceful settlement of disputes in the South China Sea.³¹ Others aimed at setting up a reliable dispute settlement mechanism in ASEAN include the ASEAN Protocol on Enhanced Dispute Settlement Mechanism of 2004³² and the ASEAN Charter on Dispute Settlement Mechanisms of 2010.³³

²⁷ See, e.g., Dongwook Chun, *Patent Law Harmonization in the Age of Globalization: The Necessity and Strategy for a Pragmatic Outcome*, 93 J. PAT. & TRADEMARK OFF. SOC’Y. 127, 131–132 (2011).

²⁸ Agus Sardjono, *Challenges for ASEAN Interoperability: Lessons from Research on Cultural Heritage Protection in Indonesia*, in ELIZABETH SIEW-KUAN NG & GRAEME AUSTIN (eds.), *INTERNATIONAL INTELLECTUAL PROPERTY AND THE ASEAN WAY: PATHWAYS TO INTEROPERABILITY*, Chapter 3.

²⁹ See information on ASEAN member states, available at <http://asean.org/asean/asean-member-states/>.

³⁰ See the *ASEAN Community Fact Sheet*, available at <http://asean.org/storage/2012/05/11a.-April-2016-Fact-Sheet-of-ASEAN-Community.pdf>.

³¹ *Id.*

³² See the *ASEAN Protocol on Enhanced Dispute Settlement Mechanism*, available at <http://agreement.asean.org/media/download/20141217102933.pdf>.

³³ See the *ASEAN Charter on Dispute Settlement Mechanisms*, available at <https://cil.nus.edu.sg/2010/2010-protocol-to-the-asean-charter-on-dispute-settlement-mechanisms/>; ASEAN Secretariat, *Protocol on Dispute Settlement Mechanisms Signed Ha Noi*, April 8, 2010, available

1.2.2 *Diplomacy*

The ASEAN Way has acted as the bedrock guiding principle for the South-east Asian region over the past fifty years. Entrenched in the Treaty of Amity, which was concluded in February 1976 to govern intra- and interstate relations in the Southeast Asian region, it emphasizes perpetual regional peace, stability, friendship, and mutual cooperation in the region. Inspired by the principles of the Charter of the United Nations, it favors a nonadversarial and informal method of dispute resolution in the settlement of interstate differences in Southeast Asia. In the spirit of ASEAN solidarity, the Association's members undertake to create conditions conducive to promote peaceful cooperation based on mutual respect and benefit among the nations of Southeast Asia.³⁴ Originally created to govern intra-ASEAN relationships, the Treaty was later extended to states outside Southeast Asia that desire to adhere to the ASEAN Way.³⁵ Further extensions were made in 2010 to include regional organizations whose members are sovereign states.³⁶ In 2016, ASEAN celebrated the fortieth anniversary of the Treaty of Amity with twenty-two non-ASEAN parties to the Treaty,³⁷ including Australia, Bangladesh, Brazil, Canada, the Democratic People's Republic of Korea, the European Union, France, India,

at http://asean.org/?static_post=protocol-on-dispute-settlement-mechanisms-signed-ha-noi-8-april-2010.

³⁴ See *The Declaration of ASEAN Concord 1976 (Bali Concord I) Preamble Para 7*, available at http://asean.org/?static_post=declaration-of-asean-concord-indonesia-24-february-1976; also available at www.icnl.org/research/library/files/Transnational/1976Declaration.pdf. The Declaration was adopted by the Heads of State/Government at the First ASEAN Summit in Bali, Indonesia on February 24, 1976. See also Koh Kheng-Lian & Nicholas A. Robinson, *Strengthening Sustainable Development in Regional Inter-Governmental Governance: Lessons from the 'ASEAN Way'*, 6 SING. J. INT'L & COMP. L. 640 (2002); and Gillian Goh, *The 'ASEAN Way' Non-Intervention and ASEAN's Role in Conflict Management*, 3 STAN. J.E. ASIAN AFF. 113 (2003).

³⁵ Such an extension was made subject to the consent of all ASEAN member states. See the First and the Second Protocols Amending the Treaty of Amity and Cooperation in Southeast Asia, which were signed on December 15, 1987 and on July 25, 1998 respectively. See, e.g., Article 1 of the First Protocol of 1987 amending Article 18 of the Treaty of Amity: "... States outside Southeast Asia may also accede to this Treaty by the consent of all the States in Southeast Asia which are signatories to this Treaty and Brunei Darussalam." See also Article 1 of the Second Protocol of 1998, which amends Article 18 of the Treaty of Amity: "States outside Southeast Asia may also accede to this Treaty with the consent of all the States in Southeast Asia..."

³⁶ See the THIRD PROTOCOL AMENDING THE TREATY OF AMITY AND COOPERATION IN SOUTHEAST ASIA 2010, Article 1, stating that the Treaty: "shall be open for accession by States outside Southeast Asia and regional organizations whose members are only sovereign States subject to the consent of all the States in Southeast Asia..."

³⁷ See ASEAN Foreign Ministers' Statement on the Occasion of the 40th Anniversary of the Treaty of Amity and Cooperation in Southeast Asia (TAC) (adopted by the 49th ASEAN Foreign Ministers' Meeting, Vientiane, July 24, 2016), available at <http://asean.org/storage/2016/07/Statement-of-the-40th-Anniversary-of-the-TAC-ADOPTED.pdf>. See also the 1976 Treaty of Amity and

Japan, Mongolia, New Zealand, Norway, the People's Republic of China, Pakistan, the Republic of Korea, Russia, Sri Lanka, Timor-Leste, Turkey, the United Kingdom, and the United States.

Even at global dialogues, ASEAN continues to hold steadfastly to this key code of conduct deeply rooted in the “principles of independence, sovereignty, equality, territorial integrity, non-interference and national identity of all nations.”³⁸ Despite immense scrutiny and criticism, particularly from some countries in the West, the ASEAN cooperation model was recently vindicated by the recent dramatic transformation in Myanmar, proving what one commentator has aptly termed the “futility of the West's preference for sanctions and isolation.”³⁹

1.3 INTELLECTUAL PROPERTY INTEROPERABILITY IN ASEAN

1.3.1 *Developing a Competitive ASEAN Economy through Intellectual Property Integration*

One of the key aims of ASEAN's dynamic pursuit of a competitive economy in the global marketplace is enhancing its intellectual property cooperation. To meet the challenges of an interdependent global economy propelled by rapid advancements in science and technology, ASEAN aims to transform the Southeast Asian region into a creative and innovative community. Toward this end, it sought to develop an intra-ASEAN intellectual property framework, while strengthening inter-ASEAN intellectual property cooperation with key external partners and international organizations.⁴⁰

Cooperation in Southeast Asia, which was signed on February 24, 1976 in Bali, Indonesia, available at <https://cil.nus.edu.sg/1976/1976-treaty-of-amity-and-cooperation-in-southeast-asia-signed-on-24-february-1976-in-bali-indonesia-by-the-heads-of-stategovernment/>.

³⁸ See *Bali Declaration on ASEAN Community in a Global Community of Nations (Bali Concord III) Para A.1.a.*, available at www.asean.org/storage/archive/documents/19th%20summit/Bali%20Concord%20III.pdf.

³⁹ Tommy Koh, *The World in 2011*, THE STRAITS TIMES (December 31, 2011).

⁴⁰ See, e.g., the EC-ASEAN Patent and Trade Marks Program (ECAP I) implemented from 1993–1997 to assist ASEAN countries to promote industrial property protection; EC-ASEAN Intellectual Property Rights Cooperation Program (ECAP II) sought to enhance harmonization and capacity building in ASEAN countries by expanding the scope of activities to cover all fields of intellectual property. Funding was extended to cover a third phase of the ECAP program, namely, the EU-ASEAN Project on the Protection of Intellectual Property Rights (ECAP III) focused on regional harmonization and aimed at aligning the activities to the ASEAN Intellectual Property Action Plan. See *ECAP Project Overview (1993–2016)*, available at www.ecap-project.org/about/ecap-project-overview-1993-2016; ECAP III, available at www.ecap3.org/.

Initial efforts to forge a common regional intellectual property profile included the creation of an ASEAN Framework Agreement on Intellectual Property Cooperation in 1995 and the formation of the ASEAN Working Group on Intellectual Property Cooperation a year later. The Working Group comprising the intellectual property offices of the ASEAN member states is tasked with developing, implementing, and coordinating the intellectual property and related activities in Southeast Asia.⁴¹ Early roadmaps included the Hanoi Plan of Action and the ASEAN Intellectual Property Action Plans of 2004–2010 and the Work Plan on Copyright. Aimed at conceiving a substantively harmonized regional intellectual property system imbued with one set of regional intellectual property laws, these earlier attempts faced numerous setbacks and had to be abandoned (or at least deferred).⁴² As ASEAN accelerated its economic integration and brought forward the launch of the ASEAN Economic Community from 2020 to 2015, a new ASEAN Intellectual Property Action Plan of 2011–2015 was formulated aimed at supporting this objective. This Action Plan built on the earlier ones by advancing regional intellectual property integration through a more fluid cooperation model. These initiatives have been discussed elsewhere⁴³ and will not be repeated here.

Instead, I will examine the post-2015 ASEAN environment. Particular emphasis will be placed on discussing the “new” strategic goals set forth in the recently adopted ASEAN Intellectual Property Rights Action Plan of 2016–2025 to illustrate the pathways of intellectual property cooperation based on the interoperability agenda. Before proceeding, a short analysis of ASEAN’s differing levels of participation in the intellectual property system may provide a useful background.

1.3.2 *Divergence in ASEAN Member States’ Participation in the Intellectual Property System*

An analysis of the trademark and patent filing data for 2014 in the ASEAN region discloses a high divergence in intellectual property creation and utilization at both inter- and intra-ASEAN levels.

⁴¹ Elizabeth Ng, ASEAN IP, *supra* note 8, at 137.

⁴² For a discussion on the constraints that ASEAN faced in substantive harmonization, see Elizabeth Ng, ASEAN IP, *supra* note 8, at 137–138. See also Emma Barraclough, ASEAN Scales Back IP Plans, MANAG. INTELL. PROP., 14 (December 2004–January 2005) and see generally CHRISTOPHER ANTONS ET AL. (eds.), INTELLECTUAL PROPERTY HARMONISATION WITHIN ASEAN AND APEC (2004), and in particular Weerawit Weeraworawit, *The Harmonisation of Intellectual Property Rights in ASEAN*, in CHRISTOPHER ANTONS ET AL. (eds.), INTELLECTUAL PROPERTY HARMONISATION WITHIN ASEAN AND APEC 205, 208 (2004).

⁴³ *Id.*