

## **AN OVERVIEW OF THE DEVELOPMENT OF INTELLECTUAL PROPERTY LAW IN MALAYSIA: SOME COMPARISONS WITH VIETNAM**

Suzi Fadhilah Ismail\*

### **ABSTRACT**

Intellectual property (IP) laws have consistently demonstrated a dynamic capacity to evolve in response to technological advancements and global trends. Such adaptability is essential in maintaining the relevance of legal frameworks and achieving their underlying objectives. This article seeks to examine the development of IP laws in Malaysia through a comparative analysis with Vietnam, aiming to explore the broader trajectory of regional legal evolution. As signatories to key international agreements, particularly the TRIPS Agreement, both countries have made significant strides in aligning their domestic IP regimes with global standards. Nevertheless, notable differences persist in legislative structures, enforcement mechanisms, institutional capacity, and policy orientations. The article essentially focuses on Malaysia's IP law development, including major legislative reforms such as the Patents (Amendment) Act 2022, the Copyright (Amendment) Act 2022, and the Trademarks Act 2019, all of which reflect the country's commitment to modernising its IP landscape. Similarly, Vietnam's rapid progress, particularly following its accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the EU-Vietnam Free Trade Agreement (EVFTA), has culminated in substantial amendments to its Law on Intellectual Property in 2022, enhancing standards of protection, enforcement, and compliance. Key themes addressed in this paper include some of the latest developments of IP legal framework in both Malaysia and Vietnam, and the responsiveness of both legal systems to emerging challenges such as artificial intelligence (AI). The article also attempts to highlight some ongoing challenges such as the low number of patents filings, piracy, counterfeit goods, and inefficient enforcement of IP laws. By identifying the respective strengths and weaknesses of each legal system, the aim is to contribute meaningfully to the discourse on IP laws and related issues in both countries, with a view toward fostering innovation and

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\* Associate Professor, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia.  
E-mail: suzi@iium.edu.my

supporting sustainable economic growth through robust and adaptive legal frameworks.

**Keywords:** intellectual property laws, TRIPS Agreement, artificial intelligence, legislative reform, challenges

## INTRODUCTION

IP is a broad term that encompasses various forms, including copyright, patents, trademarks, industrial designs, and geographical indications. Legal protection for intellectual property is essential to ensure that intellectual property rights (IPRs) are adequately safeguarded. It is a well-established principle of law that legal frameworks are inherently dynamic, evolving over time to reflect societal, technological, and economic developments. As such, IP laws have consistently demonstrated a dynamic capacity to evolve in response to technological advancement and global trends. Such adaptability is essential in maintaining the relevance of legal frameworks and achieving their underlying objectives. At the global level, many countries have aligned their IP legislation to keep pace with emerging developments while tailoring it to their specific national needs. A distinctive feature of IP law is its territorial nature, which often results in variations in legal provisions to ensure practical applicability within each jurisdiction. It is therefore not surprising that international treaties, such as the TRIPS Agreement, recognise the diverse needs of countries, particularly by taking into account their varying levels of development, from developed and developing nations, to least developed countries. As this article seeks to examine the development of IP laws in Malaysia through a comparative analysis with Vietnam, the following discussion will first focus on the legal framework of IP laws in Malaysia.

## LEGAL FRAMEWORK OF IP LAWS IN MALAYSIA

Malaysia achieved independence on 31 August 1957. In the years following independence, the country undertook significant reforms to unify and modernise its legal framework, including the IP legislation. A pivotal moment occurred in 1969 when Malaysia introduced a homogeneous IP system nationwide, repealing various colonial-era enactments and ordinances. This unification laid the groundwork for a cohesive IP regime across the country.<sup>1</sup>

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<sup>1</sup> Ida Madieha Azmi, Jariah bd Jalil, and Suzi Fadhilah Ismail, "Malaysia: Intellectual Property," in *The International Encyclopaedia of Laws*, ed.

Subsequent developments include the establishment of an indigenous trademark registration system with the enactment of the Trade Marks Act 1976, and the introduction of the Patents Act 1983, which came into force on 1 October 1986. These acts replaced earlier legislation, such as the Registration of United Kingdom Patents Act 1951 and various regional ordinances, thereby standardising IP protection throughout Malaysia.

Currently, Malaysia's IP rights are governed by the following principal statutes:<sup>2</sup> the Copyright Act 1987 (Act 332), effective from 1 December 1987, with subsequent amendments to address evolving technological and legal landscapes; the Trademarks Act 2019 (Act 815), which repealed the Trademarks Act 1976, aligning Malaysia's trademark laws with international standards;<sup>3</sup> the Patents Act 1983 (Act 291), providing comprehensive protection for inventions and innovations; the Industrial Designs Act 1996 (Act 552), governing the protection of industrial designs; the Geographical Indications Act 2000 (Act 602), offering protection for products with specific geographical origins; the Layout-Designs of Integrated Circuits Act 2000 (Act 601), safeguarding the design of integrated circuits; and last but not least, the Protection of New Plant Varieties Act 2004 (Act 634), ensuring rights for breeders of new plant varieties. Apparently, among all the IP laws, the most recent amendments can be seen in the Trademarks Act 2019, which repealed the earlier statute.

All the abovementioned statutes collectively form a robust legal framework that supports and protects intellectual property rights in

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Hendrik Vanhees and Alphen Aan Den Rijn (The Netherlands: Kluwer Law International, 2013).

<sup>2</sup> The Official Portal of Intellectual Property Corporation of Malaysia (MyIPO), "About Us," accessed January 19, 2026, <https://www.myipo.gov.my/about-us/>.

<sup>3</sup> Most notably by acceding to the Madrid Protocol, which facilitates international trademark registration. The amendments introduced a single-application, multi-class filing system, expanded the scope of protectable marks to include non-traditional elements like 3D shapes, sound, and scent, and improved the system's overall modernization and efficiency. The Official Portal of Intellectual Property Corporation of Malaysia (MyIPO), "FAQ - How Does One Secure Trademark Protection Abroad?," accessed January 19, 2026, <https://www.myipo.gov.my/faq/>.

Malaysia, reflecting the nation's commitment to fostering innovation and creativity.

### **THE ROLES OF THE INTELLECTUAL PROPERTY CORPORATION OF MALAYSIA (MyIPO)**

The development of intellectual property (IP) in Malaysia has evolved significantly over the decades, underpinned by both national reforms and international alignment. As the custodian of IP rights in Malaysia, the Intellectual Property Corporation of Malaysia (MyIPO) plays a central role in administering and promoting the protection of IP across the country.

Established as a statutory body under the Ministry of Domestic Trade and Cost of Living (KPDN), MyIPO is responsible for the development of various forms of intellectual property, including trademarks, patents, industrial designs, geographical indications, copyrights, and layout designs of integrated circuits.<sup>4</sup> Key roles and responsibilities of MyIPO include the processing of IP applications, managing the registration of patents, trademarks, and industrial designs. In addition, MyIPO plays an important role in enhancing public awareness and education. It has been conducting outreach and educational programs to increase public understanding of IP. With regard to policy advisory, MyIPO plays a leading role in assisting the government in the formulation and revision of IP-related laws and regulations.

Additionally, MyIPO also facilitates international engagement by representing Malaysia in global IP forums and simultaneously ensuring local IP laws align with international best practices, namely in maintaining consistency with WIPO-administered treaties including Paris Convention, Madrid System, *etc*, as well as using the Nice Classification for goods/services (trademark).<sup>5</sup> Most importantly, MyIPO has been providing IP commercialisation support to encourage

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<sup>4</sup> The Official Portal of Intellectual Property Corporation of Malaysia (MyIPO), "About Us."

<sup>5</sup> World Intellectual Property Organization (WIPO), "WIPO-Administered Treaties," accessed January 19, 2026, <https://www.wipo.int/wipolex/en/treaties/ShowResults?code=MY>.

innovation and help creators and inventors turn their IP into marketable assets.

## **INTERNATIONAL COOPERATION AND TREATY MEMBERSHIPS**

To remain competitive and aligned with global standards, Malaysia is always at the forefront in acceding to several key international IP treaties which are administered by the World Intellectual Property Organization (WIPO)<sup>6</sup> and the World Trade Organization (WTO). Notable treaties include the Berne Convention for the Protection of Literary and Artistic Works,<sup>7</sup> the Paris Convention for the Protection of Industrial Property,<sup>8</sup> the Patent Cooperation Treaty (PCT),<sup>9</sup> and the Madrid Protocol,<sup>10</sup> which Malaysia acceded in 2019 to facilitate international trademark registration. Significantly, Malaysia acceded to the TRIPS Agreement under the WTO framework.<sup>11</sup> TRIPS has been

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<sup>6</sup> World Intellectual Property Organization (WIPO), “WIPO Notification No. 144 Convention Establishing the World Intellectual Property Organization: Accession by Malaysia,” accessed January 19, 2026, [https://www.wipo.int/wipolex/en/treaties/notifications/details/treaty\\_convention\\_144](https://www.wipo.int/wipolex/en/treaties/notifications/details/treaty_convention_144).

<sup>7</sup> World Intellectual Property Organization (WIPO), “Berne Notification No. 130 Berne Convention for the Protection of Literary and Artistic Works: Accession by Malaysia,” accessed January 19, 2026, [https://www.wipo.int/wipolex/en/treaties/notifications/details/treaty\\_berne\\_130](https://www.wipo.int/wipolex/en/treaties/notifications/details/treaty_berne_130).

<sup>8</sup> World Intellectual Property Organization (WIPO), “Paris Notification No. 120 Paris Convention for the Protection of Industrial Property: Accession by Malaysia,” accessed January 19, 2026, [https://www.wipo.int/wipolex/en/treaties/notifications/details/treaty\\_paris\\_120](https://www.wipo.int/wipolex/en/treaties/notifications/details/treaty_paris_120).

<sup>9</sup> Ministry of International Trade and Industry (MITI), “Intellectual Property Protection,” accessed January 19, 2026, <https://www.miti.gov.my/index.php/pages/view/2462>.

<sup>10</sup> World Intellectual Property Organization (WIPO), “Malaysia Joins the Madrid System,” accessed January 19, 2026, [https://www.wipo.int/en/web/madrid-system/w/news/2019/news\\_0027](https://www.wipo.int/en/web/madrid-system/w/news/2019/news_0027).

<sup>11</sup> World Trade Organization (WTO), “Frequently Asked Questions about TRIPS [ Trade-Related Aspects of Intellectual Property Rights ] in the WTO,” accessed January 19, 2026, [https://www.wto.org/english/tratop\\_e/trips\\_e/tripfq\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/tripfq_e.htm).

proclaimed as the most successful global effort to impose minimum standards for IP protection across the globe.<sup>12</sup>

Beyond harmonisation, TRIPS Agreement compels member states, including Malaysia, to adopt practical protection and enforcement mechanisms. This includes effective border measures, judicial remedies, and administrative procedures, aiming to ensure that rights holders can defend and enforce their IP against infringement. In Malaysia, these mechanisms include border enforcement under the Customs (Prohibition of Imports and Exports) Order 2017, which empowers Customs to seize counterfeit goods at entry points; civil remedies such as injunctions, damages, and account of profits under the Copyright Act 1987 and the Patents Act 1983; and criminal sanctions for trademark counterfeiting under the Trade Marks Act 2019. The Intellectual Property Corporation of Malaysia (MyIPO) further strengthens enforcement through public awareness initiatives and collaboration with enforcement agencies, while the Special IP Courts, established in 2007, enhance judicial efficiency in IP disputes. For instance, in *Philip Morris Brands Sarl v Goodness for Import & Export & Anor*<sup>13</sup>, in relation to trademark infringement, the High Court granted a perpetual mandatory injunction and RM300,000 exemplary damages against a distributor of counterfeit cigarettes, demonstrating judicial willingness to protect rights holders.

All in all, Malaysia's participation in these treaties reflects its commitment to harmonising domestic IP laws with international frameworks and providing stronger protection for rights holders both locally and globally.

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<sup>12</sup> Carlos M Correa, "Interpreting the Flexibilities under the TRIPS Agreement," in *Access to Medicines and Vaccines: Implementing Flexibilities Under Intellectual Property Law*, ed. Carlos M. Correa and Reto M. Hilty (Switzerland: Springer, 2022), 1; Suma Athreye, Lucia Piscitello, and Kenneth C Shadlen, "Twenty-Five Years since TRIPS: Patent Policy and International Business," *Journal of International Business Policy* 3, no. 4 (2020): 315.

<sup>13</sup> [2018] 7 MLJ 350.

## NATIONAL IP POLICY AND STRATEGIC INITIATIVES

At the national level, the National Intellectual Property Policy (NIPP)<sup>14</sup> provides strategic direction for IP development. The policy was created with several important aims, namely to strengthen Malaysia's IP ecosystem, to promote innovation and creativity, to facilitate IP commercialisation, to enhance public and private sector collaboration in research and development (R&D), and to encourage use of IP as a tool for economic growth and competitiveness.

From a practical perspective, the NIPP's objectives have been translated into feasible strategic initiatives, such as the establishment of specialised IP courts in 2007. These courts serve an important role in ensuring expertise and efficiency in adjudication. In addition, the NIPP also facilitates enhanced powers for border control under the Customs (Prohibition of Imports) Order 2017,<sup>15</sup> and various capacity-building programmes led by MyIPO<sup>16</sup> to strengthen the skills of customs officers, judges, and enforcement personnel. These initiatives reflect a clear linkage between NIPP and operational enforcement mechanisms.

Notably, one of the NIPP's significant goals is to ensure high standards of IP protection, requiring regular updates to laws in response to global trends and emerging issues. As part of this, Malaysia has adopted TRIPS-plus standards by joining the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty of 1996. Additionally, the NIPP emphasises stimulating IP-related activities by fostering a supportive environment that includes incentives, funding, management support, commercial opportunities, enforcement mechanisms, and dispute resolution systems.<sup>17</sup>

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<sup>14</sup> The Ministry of Domestic Trade and Cost of Living, "Policy - National Intellectual Property Policy," accessed January 19, 2026, <https://www.kpdn.gov.my/en/corporate-info/policy>.

<sup>15</sup> The Royal Malaysian Customs Department, "Customs Order," accessed January 19, 2026, [https://www.customs.gov.my/en/pg/Pages/pg\\_prthkastam.aspx](https://www.customs.gov.my/en/pg/Pages/pg_prthkastam.aspx).

<sup>16</sup> The Official Portal of Intellectual Property Corporation of Malaysia (MyIPO), "About Us."

<sup>17</sup> Abdul Ghani Azmi, Ida Madieha, "Between Regulatory Reforms, Trade Liberalisation and Technology Dependence: Intellectual Property Challenges in Malaysia," in *Malaysia's Trade Governance at a*

## ISSUES AND CHALLENGES

Despite having an established legal framework for intellectual property (IP), Malaysia continues to face significant challenges in the effective implementation and enforcement of IP laws. According to statistics from the Intellectual Property Corporation of Malaysia (MyIPO), the country still lags behind in various areas of IP development. One of the most pressing concerns is the disparity in patent filings between local companies and multinational corporations. The statistics as being made publicly available at MyIPO's website<sup>18</sup> clearly shows that multinational companies have been consistently dominating the number of patents filed in Malaysia, indicating a gap in innovation, research capabilities, and IP awareness among local entities. From the author's observation, this gap can be attributed to several factors, such as relatively limited funding for research and development (R&D). Despite the availability of a number of funding initiatives provided by the government such as Dana Pemfailan Harta Intelek (Dana IP 2.0),<sup>19</sup> Applied Innovation Fund (AIF) under Ministry of Science Technology and Innovation (MOSTI)<sup>20</sup> and so forth, more funding is needed to enhance and close the gap in patent filing. Other factors include lack of strategic IP planning among small and medium enterprises (SMEs), as well as insufficient knowledge about the importance of protecting innovations through patents.

Based on the statistics, the share of trademark applications originating from local entities has experienced a downward trend. In 2014, foreign applicants accounted for 55.5% of total trademark filings, while local industries contributed 44.5%. By 2024, the local share had declined further to 38.3%. A similar pattern is evident in

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*Crossroads*, ed. Pierre Sauvé (Kuala Lumpur: Khazanah Research Institute, 2018), 191.

<sup>18</sup> The Intellectual Property Corporation of Malaysia (MyIPO), "Statistic Application & Registration," accessed January 19, 2026, <https://www.myipo.gov.my/statistic-application-registration>.

<sup>19</sup> The Intellectual Property Corporation of Malaysia (MyIPO), "Dana Pemfailan Harta Intelek (Dana IP 2.0) Program 2025," accessed January 19, 2026, <https://www.myipo.gov.my/dana-pemfailan-harta-intelek-dana-ip-2-0-program-2025>.

<sup>20</sup> i-OGSE, "Financing Scheme Applied Innovation Fund (AIF)," accessed January 19, 2026, <https://iogse.gov.my/financial-search/applied-innovation-fund-aif>.

patent and utility innovation filings. In 2024, foreign applicants submitted 86.6% of total applications, whereas Malaysian entities accounted for only 13.36%.<sup>21</sup> This trend underscores Malaysia's continued role as a consumer of intellectual property rather than a primary generator or innovator of it.

Another persistent challenge is pertaining to the enforcement of IP rights. Although Malaysia has aligned its laws and legal framework to comply with international standards such as the TRIPS Agreement, the Madrid Protocol and the Patent Cooperation Treaty (PCT), enforcement mechanisms are relatively slow and resource-intensive. Counterfeiting and piracy, especially in the digital space, remain rampant and continue to pose threats to IP owners. Apparently, enforcement has historically been a weak point. Despite this, it is worth noting that notable improvements have been made in recent years. Issues such as piracy, particularly in the area of copyright, have seen significant progress. For instance, Malaysia was once placed on the United States Trade Representative (USTR) Watch List due to concerns over copyright infringement, but sustained enforcement efforts have led to a better standing in recent evaluations. In terms of statistics, domestically, Malaysia has been intensifying efforts to combat piracy and counterfeit goods. Data from the then Ministry of Domestic Trade and Consumer Affairs (KPDNHEP) shows that between 2019 and May 2022, authorities conducted 1,160 seizures of counterfeit products, with an estimated total value of RM94.7 million.<sup>22</sup> This apparently reflects the government's ongoing commitment to strengthening IPR protection and reducing the prevalence of counterfeit goods in the local market.

With regards to online enforcement, the Malaysian Communications and Multimedia Commission (MCMC) has been tasked to leverage sophisticated automated systems to monitor, detect, and remove pirated content from websites and social media platforms. According to MCMC data, a total of 586, 583, and 510 websites were

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<sup>21</sup> The Intellectual Property Corporation of Malaysia (MyIPO), "Statistic Application & Registration."

<sup>22</sup> Malaysian Communications and Multimedia Commission (MCMC), "Laporan Tahunan Bersepadu MCMC 2022," accessed January 19, 2026, [https://www.mcmc.gov.my/skmmgovmy/media/General/Report/Laporan\\_Tahunan-2022.pdf](https://www.mcmc.gov.my/skmmgovmy/media/General/Report/Laporan_Tahunan-2022.pdf).

blocked for copyright violations in 2020, 2021, and 2022 respectively.<sup>23</sup> These figures suggest that strict copyright enforcement is having a deterrent effect on online piracy. Furthermore, MCMC collaborates with international organisations and foreign governments to address cross-border digital piracy. These partnerships involve sharing intelligence, best practices, and participation in global initiatives aimed at safeguarding intellectual property rights in the digital environment.<sup>24</sup>

Other than the issues of enforcement, there is also another issue which lies in public perception and education. Many local inventors, startups, and academic institutions are either unaware of the benefits of IP protection or perceive the process to be too costly and complex. As a result, valuable innovations may remain unprotected or are prematurely disclosed, losing their potential for commercialisation. The Government and MyIPO are fully aware of these challenges and there have been concerted efforts towards stronger policy initiatives to support local innovation and enhance IP education and awareness.

Undoubtedly, Malaysia has made commendable progress in establishing a solid IP framework, bridging the gap between local and multinational patent filings, strengthening enforcement, and increasing awareness. These actions, from the legal revision in streamlining the patent application process, to improving enforcement through better coordination among regulatory, legal, and enforcement bodies definitely serve as crucial steps to ensure that IP becomes a driving force for national innovation and economic growth.

## **ARTIFICIAL INTELLIGENCE (AI)**

Other than the above-mentioned issues, the most recent challenge pertains to Artificial Intelligence (AI), as the country is actively responding and adapting to the complexities resulting from the rapid

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<sup>23</sup> Malaysian Communications and Multimedia Commission (MCMC).

<sup>24</sup> X Cai, N M Althabhwani, and Z A Zainol, "Intellectual Property Law Reform: Comparative Insights and Valuable Lessons from the Experiences of Vietnam, Malaysia, and Mexico within the CPTPP Framework," *Journal of Infrastructure, Policy and Development* 8, no. 14 (2024): 21.

advancement of AI, particularly in relation to IP law.<sup>25</sup> Like many jurisdictions around the world, Malaysia encounters significant challenges in keeping its legal framework aligned with the evolving technological landscape.

In today's evolving business and entertainment landscape shaped by AI, copyright remains the primary tool for protecting software code. However, as AI increasingly becomes a tool for generating creative content such as art, music, journalism, and games, questions arise about how copyright laws apply to these AI-generated works. The impact on copyright law varies by country, as legal frameworks differ across jurisdictions. This global inconsistency has sparked widespread debate, raising significant legal and policy challenges concerning the eligibility of AI-generated content for copyright protection.<sup>26</sup>

Essentially, from the perspective of copyright law, one major concern is the question of authorship and ownership of AI-generated works.<sup>27</sup> Under existing Malaysian copyright law, protection is typically granted to works created by human authors. However, with the increasing prevalence of AI-generated content, which ranges from written text and music to visual art, the law remains unclear on whether and how such works can be protected, and more importantly, who the rightful owner of the copyright would be. Should the creator of the AI system own the rights? Or should it be the user who instructed the AI to produce the work?

In Malaysia, copyright protection as spelt out under the Copyright Act 1987 depends on whether a work meets the criteria in section 7, particularly whether sufficient effort has been made to render it original. A key issue in considering AI-generated works is the 1987

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<sup>25</sup> MyIPO has recently organized National Dialogue to address the issue. Sun Media Corporation Sdn Bhd, "MyIPO Pushes for Stronger IP Legal Framework amid AI Challenges," accessed August 18, 2025, <https://thesun.my/business-news/myipo-pushes-for-stronger-ip-legal-framework-amid-ai-challenges-OD14712194>.

<sup>26</sup> Abdul Ghani Azmi and Ida Madieha, "Copyright Law in Malaysia: Cases and Commentary" (Selangor: Malaysia: Sweet & Maxwell, 2012).

<sup>27</sup> Mohammad Belayet Hossain, Mahadi Hasan Miraz, and Abba Ya'u, "From Legality to Responsibility: Charting the Course for AI Regulation in Malaysia," *IIUMLJ* 32, no. 1 (2024): 407.

Act's language, which primarily protects the rights of natural persons and legal entities. For instance, section 10 of the Act provides that copyright is granted to a work if the author or any co-author in the case of joint authorship, is a 'qualified person' at the time of creation. In this regard, the Act defines a qualified person as: an individual who is a citizen or permanent resident of Malaysia; or a body corporate established in Malaysia and recognised by Malaysian law as a legal entity. Apparently, it is difficult for AI-generated content to be recognised as the author under current statutory provision.

Looking at legal frameworks across the globe, in the United States for instance, the US Copyright Office insists that human authorship is necessary to qualify for copyright protection, as illustrated in the recent case of *Stephen Thaler v Shira Perlmutter*.<sup>28</sup> In the United Kingdom, the UK Government has made an initiative through the issuance of a policy paper on 'A pro-innovation approach to AI regulation' to formulate specific regulatory framework. Interestingly, UK has slightly different approaches as compared to US as it attempts to provide an exception to the human authorship requirements.<sup>29</sup> Nevertheless, the position in the European Union on this issue is similar to the US' stance as the former seems to emphasise on the presence of a human author to qualify for copyright protection.<sup>30</sup>

Other than issues on copyright law, patent law in Malaysia, like in many other countries, currently does not recognise AI systems as inventors. It is to be noted that under section 12 of the Malaysian Patents Act 1983 (PA 1983), an invention is defined as "an idea of an inventor which permits in practice the solution to a specific problem in the field of technology." However, PA 1983 does not define the term "inventor". Section 12 of the Act is to be read together with section 18, which provides for the right to file a patent application. Besides, regulation 10 of the Patents Regulations 1986, further requires that if the applicant is not the inventor, a declaration must be submitted to justify the applicant's legal entitlement to file the application. In other words, even if AI were recognised as an inventor, patent authorities or courts would still require the applicant to prove ownership of the

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<sup>28</sup> *Thaler v. Perlmutter*, No. 22-CV-384-1564-BAH.

<sup>29</sup> Azmi, Copyright Law in Malaysia: Cases and Commentary, 143.

<sup>30</sup> *Ibid*, 144.

invention.<sup>31</sup> This raises a critical issue: how can legal ownership be transferred from an AI system to a human applicant, given that current law presumes inventorship arises from a natural person? Historically, inventorship must arise from a natural person and a majority of national patent laws (such as US, UK<sup>32</sup>) refer to inventors in human terms. Essentially, an inventor has the legal capacity and accountability of which an AI system inherently lacks if it were to be recognised as an inventor. Consequently, this presents a legal gap in situations where inventions are autonomously generated by AI. The debate over whether AI should be granted inventorship status continues globally, with some jurisdictions experimenting with policy changes. Malaysia, however, has yet to take a definitive stance, resulting in uncertainty for researchers and innovators operating at the forefront of AI development.

Beyond copyright and patents, broader liability issues also arise. For example, in the case of autonomous vehicles or AI-driven medical devices, questions about responsibility and legal accountability in the event of an accident or malfunction remain largely unresolved. These scenarios challenge the traditional legal principles of liability and negligence and demand further analysis, revisiting, re-examination and review of affected laws, inclusive of torts and consumer protection laws.

In addressing these challenges as mentioned above, Malaysia has taken proactive steps and is undertaking ongoing review, revision and updating of its IP and related legal frameworks. The efforts embrace engaging in cross-sector collaboration, benchmarking international best practices, and conducting public consultations to strike a balance between encouraging innovation and ensuring legal clarity. Failure to do so may hinder the country's ability to fully benefit from the opportunities presented by AI while exposing it to legal and regulatory vulnerabilities.

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<sup>31</sup> Hossain, Miraz, and Ya'u, "From Legality to Responsibility: Charting the Course for AI Regulation in Malaysia," 410-411.

<sup>32</sup> For example, in *Thaler v Comptroller* [2023] UKSC 49, the UK Supreme Court (UKSC) ruled that an artificial intelligence (AI) cannot be an inventor for the purposes of UK patent law.

## COMPARATIVE ANALYSIS OF IP LAWS IN MALAYSIA AND VIETNAM

In relation to legal framework and international commitments, Vietnam is also a member of many international organisations and has acceded to international treaties such as the TRIPS Agreement, the Paris Convention, and the Berne Convention. As such, both Vietnam and Malaysia have established their IP laws grounded in those international treaties. At national level, Malaysia's IP system is governed by specific acts such as the Patents Act 1983, the Copyright Act 1987, and the Trademarks Act 2019, as already mentioned in the preceding discussion, while for Vietnam, IP laws were initially introduced in 2005 and subsequently revised between 2009 and 2019 to better align with international and regional standards. The most recent amendment in 2022 marked a significant step in the country's dedication to protecting IPR.<sup>33</sup> This revision expanded and reinforced legal coverage over various forms of IP, including patents, utility models, industrial designs, trademarks, geographical indications, appellations of origin, trade secrets, as well as copyrights and related rights. This 2022 amendment has been seen as a key achievement as it managed to introduce clearer provisions regarding technology transfer, inclusive of AI-related inventions, and IP enforcement.

TRIPS Agreement has been very instrumental in harmonising IP laws globally, but beyond harmonisation, Vietnam has introduced a number of practical protection and enforcement mechanisms to give remedies to rights holders. For example, under the Law on Intellectual Property 2005 (amended 2022)<sup>34</sup>, rights holders may pursue civil remedies such as injunctions, damages, and seizure of infringing goods, while criminal liability is imposed for serious infringements under the Penal Code 2015 (amended 2017). Administrative enforcement is particularly prominent in Vietnam which includes the Inspectorate of the Ministry of Science and Technology (MOSTI), the Market Surveillance Authority, and the Customs Department which

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<sup>33</sup> World Intellectual Property Organization (WIPO), "Law No. 07/2022/QH15 of June 16, 2022, Amending and Supplementing a Number of Articles of the Law on Intellectual Property, Viet Nam," accessed January 19, 2026, <https://www.wipo.int/wipolex/en/legislation/details/21740>.

<sup>34</sup> Ibid.

regularly impose fines, confiscate counterfeit goods, and suspend infringing business activities. Border enforcement measures are also available under the Customs Law 2014,<sup>35</sup> enabling rights holders to request Customs to suspend clearance of suspected infringing goods.<sup>36</sup>

In terms of institutional bodies of IP laws, Malaysia has a dedicated custodian known as the Intellectual Property Corporation of Malaysia (MyIPO), which oversees IP registration and enforcement. Similarly in Vietnam, the country has established the National Office of Intellectual Property (NOIP) that plays a similar role in IP administration.

## IP LAWS REVISION AND AMENDMENT

Looking at some of the key similarities between both countries as mentioned above, Malaysia and Vietnam have already reformed their IP laws to align with their commitments under international agreements as well as trade deals such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Regional Comprehensive Economic Partnership (RCEP). Specifically, with regards to IP law reform under CPTPP in Malaysia, the country has adopted transitional clauses in its legal reform process to ease the shift towards higher standards of IP protection required under the CPTPP. These clauses provide a grace period for implementing certain obligations, minimising disruption to local industries and allowing time for gradual legal alignment.<sup>37</sup> Transitional provisions or clauses basically refer to temporary legal rules built into reforms that smooth the transition from the old IP regime to the new CPTPP-compliant regime, by phasing in obligations and clarifying how existing rights are

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<sup>35</sup> World Intellectual Property Organization (WIPO), "Law No. 54/2014/QH13 of June 23, 2014, on Customs, Viet Nam," accessed January 19, 2026, [https://www.wipo.int/wipolex/en/legislation/details/17213?](https://www.wipo.int/wipolex/en/legislation/details/17213?lang=en)

<sup>36</sup> Reuters, "Vietnam Seizes Fake Rolex, Prada Items in Counterfeit Crackdown, State Media Reports," accessed September 21, 2025, <https://www.reuters.com/markets/emerging/vietnam-seizes-fake-rolex-prada-items-counterfeit-crackdown-state-media-reports-2025-05-30>.

<sup>37</sup> Cai, Althabhwani, and Zainol, "Intellectual Property Law Reform: Comparative Insights and Valuable Lessons from the Experiences of Vietnam, Malaysia, and Mexico within the CPTPP Framework," 16.

treated. The specific role of these transitional provisions includes granting additional time for legislative amendments, enhancing stakeholder consultations, and ensuring that the enforcement mechanisms are adequately prepared for the new standards. Some of key CPTPP-related provisions include patent linkage, non-disclosure of test data, extended copyright duration, and protection of encrypted signals; all of these have yet to be fully legislated. At this juncture, it is worth noting that although Malaysia's legal revisions began in 2018, the CPTPP only entered into force in 2022, and many transitional provisions remain active until 2024. This extended timeline reflects a deliberate strategy to balance compliance with domestic readiness, and ongoing IP reforms are expected as Malaysia continues to meet its treaty obligations.

With regards to Vietnam's IP Law Reform under the CPTPP, by the end of 2023, the country had largely completed the domestication of CPTPP-related IP provisions within the transition period, including those with temporary exemptions. Key reforms include joining international treaties, sound trademark registration, patent term adjustments, TPM and RMI rules, protection of encrypted broadcasts, and ISP liability. It is to be noted that Vietnam has taken a gradual and structured approach to reform, deliberately creating a buffer to minimize the disruptive effects of rapid legal changes.<sup>38</sup>

Other than fulfilling obligation under various treaties, both countries have also demonstrated a strong commitment to revising their IP laws to stay aligned with technological advancements and the emerging era of artificial intelligence. For instance, Vietnam's 2022 IP Law amendment introduced clearer provisions on technology transfer and protection of AI-related inventions, while Malaysia is still in the midst of updating its laws to address emerging technologies in particular, AI. Additionally, each country has also developed online IP registration systems to streamline application processes. Despite some initiatives undertaken by the respective government, public awareness of IP protection remains relatively low in both jurisdictions, particularly among Small and Medium-sized Enterprises (SMEs).

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<sup>38</sup> Ibid, 15.

## ENFORCEMENT ISSUES

In spite of having established legal frameworks and being signatories to major international treaties such as the TRIPS Agreement and the Paris Convention, both Malaysia and Vietnam continue to face significant challenges in the effective protection and enforcement of intellectual property (IP) rights. For example, Malaysia continues to encounter persistent challenges with counterfeiting and piracy, particularly in the digital sphere. Between 2021 and December 2023, enforcement authorities, in collaboration with industry stakeholders, reported the blocking of 2,341 websites and the removal of more than 2,000 items of illegal content.<sup>39</sup> While these actions reflect active enforcement, the scale of infringement requiring such measures highlights enduring gaps in protection. The OECD–Malaysia Investment Policy Review (2013) similarly observed that, despite notable progress in strengthening the legal framework and IP registration systems, judicial enforcement remains constrained by slow criminal prosecutions, court delays, and case backlogs.<sup>40</sup> Subsequent reports have also noted that the judiciary is often overloaded, undermining both the speed and effectiveness of IP litigation.<sup>41</sup> For Vietnam, statistically, in 2024, the Intellectual Property Office of Vietnam recorded more than 2,000 cases of IP infringement, with the estimated value of counterfeit and pirated goods amounting to “hundreds of billions of đồng.” In just the first half of 2025, authorities uncovered over 3,270 additional infringement cases. Both startups and established brands have been identified as frequent targets, particularly in relation to blatant trademark counterfeiting and imitation packaging.

With regards to enforcement, Vietnam apparently has shown stronger IP law enforcement in recent years, especially in the context

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<sup>39</sup> Piracy Monitor, “Special 301 Close-up: Malaysia Has Developed a Successful Anti-Piracy Framework,” accessed September 22, 2025, <https://piracymonitor.org/special-301-close-up-malaysia-has-developed-a-successful-anti-piracy-framework/>.

<sup>40</sup> Enin Pub, “OECD Investment Policy Reviews: Malaysia 2013,” accessed September 22, 2025, <https://ebin.pub/oecd-investment-policy-reviews-malaysia-2013-9789264194588-9264194584.html>.

<sup>41</sup> IPRD, “Most Common Intellectual Property Rights Problems: Focus On South - East Asia,” accessed September 22, 2025, <https://www.iiprd.com/most-common-intellectual-property-rights-problems-focus-on-south-east-asia/>.

of its WTO and CPTPP obligations by introducing criminal sanctions for some IP violations. Ironically, the existence of criminal sanctions in respective statutes does not necessarily guarantee their consistent or effective application. In Vietnam, practitioners have frequently reported obstacles such as high thresholds for initiating cases, stringent evidentiary requirements, limited institutional capacity, delays, and a very low number of prosecutions.<sup>42</sup> As a result, criminal enforcement is rarely pursued in practice, and large-scale IP violations seldom culminate in criminal proceedings. For instance, in counterfeit product seizure cases such as the one involving seizure of counterfeit of Apollo Silicone products,<sup>43</sup> matters are often addressed initially through administrative inspections and referred to the police, yet follow-up criminal prosecutions are frequently delayed or do not materialize at all.

Similarly, Malaysia, while having a comprehensive legal structure, still faces persistent challenges with enforcement efficiency. While the country has made progress in tackling piracy and counterfeit goods, enforcement mechanisms are still seen as slow and inconsistent.<sup>44</sup> Patent prosecution typically takes three to five years, and hence investigations and prosecutions can be slow and time-consuming. One of the reasons is that enforcement often relies heavily on IP owners to drive action, and that case progression to criminal courts can be protracted.<sup>45</sup> Limited expertise among enforcement

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<sup>42</sup> KENFOX IP & Law Office, “Vietnam’s Intellectual Property Legal Framework: Opportunities and Challenges for Foreign Investors,” accessed September 22, 2025, <https://kenfoxlaw.com/vietnams-intellectual-property-legal-framework-opportunities-and-challenges-for-foreign-investors>.

<sup>43</sup> KENFOX IP & Law Office, “Handling IPR Infringement under Criminal Route in Vietnam: Key Takeaways,” accessed September 22, 2025, <https://kenfoxlaw.com/handling-ipr-infringement-under-criminal-route-in-vietnam-key-takeaways>.

<sup>44</sup> Henry & Dominic Herman, “Effective Strategies for Enforcing IP Rights in Vietnam,” Legalease Ltd., accessed May 28, 2025, <https://www.legal500.com/developments/thought-leadership/effective-strategies-for-enforcing-ip-rights-in-vietnam/>.

<sup>45</sup> P. Kandiah, “Business Today Perception & Reality: IP Rights Enforcement in Malaysia,” KASS International Sdn Bhd, accessed September 21, 2025, <https://kass.asia/business-today-perception-reality-ip-rights-enforcement-in-malaysia/>.

agencies, coupled with lengthy legal proceedings, undermines confidence in the system.<sup>46</sup>

Similarly in Vietnam, enforcement remains a significant issue. According to the USTR Special 301 Report 2020, Vietnam remained on the U.S. Government's Priority Watch List that year. While some progress had been made in intellectual property enforcement, several key concerns persisted. These included poor coordination among enforcement agencies, limited institutional capacity, insufficient resources, and widespread counterfeiting and copyright piracy.<sup>47</sup> With respect to judicial enforcement, Vietnam faces significant challenges as it lacks specialised IP courts and dedicated judges. Litigation is frequently perceived as cumbersome, costly, and time-consuming, with concerns that the judiciary does not always possess the requisite expertise to adjudicate complex IP disputes effectively.<sup>48</sup> In addition, IPR infringements on digital and e-commerce platforms in Vietnam are increasingly complex and difficult to detect. These violations predominantly involve products bearing counterfeit trademarks and misused geographical indications.<sup>49</sup>

In terms of enforcement mechanisms, Malaysia places significant emphasis on judicial remedies in intellectual property (IP) infringement cases, particularly through the granting of injunctions, damages, and accounts of profits. Since 2007, specialised IP courts<sup>50</sup>

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<sup>46</sup> Vinh Le Quang, "The State of IP Infringement and Vietnam's Efforts to Boost Efficiency in Enforcement of Intellectual Property Rights," *Law Business Research*, accessed May 28, 2025, <https://www.lexology.com/library/detail.aspx?g=60f02931-c261-4ef3-a100-0ca2346b97fd>.

<sup>47</sup> Intellectual Property Office, "IP Enforcement in Vietnam," accessed May 28, 2025, <https://www.gov.uk/guidance/ip-enforcement-in-vietnam>.

<sup>48</sup> Apex Asia Media Group, "Vietnam's IP Court Ready to Take off," accessed September 22, 2025, <https://asiaiplaw.com/section/in-depth/vietnams-ip-court-ready-to-take-off>.

<sup>49</sup> Nguyen Ho Bich Hang, "Protection of Intellectual Property Rights in the Context of Digital Transformation," *Jurisprudence Journal*, accessed May 28, 2025, <https://vietnamlawmagazine.vn/protection-of-intellectual-property-rights-in-the-context-of-digital-transformation-74087.html>.

<sup>50</sup> Court of Kuala Lumpur, "Official Portal of State Court of Kuala Lumpur," accessed January 19, 2026, <https://kl.kehakiman.gov.my/en/history-kuala-lumpur-court>.

have been designated with the objective of enhancing adjudicatory quality and efficiency. These courts provide rights-holders with access to comprehensive monetary compensation and injunctive relief. Reports indicate that in 2008 the Intellectual Property Courts successfully disposed of nearly 70% of registered IP cases, a marked improvement from approximately 15% in the preceding year.<sup>51</sup> Comparatively, while similar judicial remedies are available in Vietnam, in practice, the enforcement landscape demonstrates a heavier reliance on administrative measures, which offer swifter but often less comprehensive outcomes. Recent reports indicate that Vietnam is taking steps to strengthen its judicial processes, including proposals for specialised IP benches; however, civil litigation in IP matters remains at a comparatively nascent stage of development.<sup>52</sup>

Apparently, Malaysia and Vietnam do not share the same legal system as the former operates within a common law framework, while the latter follows a civil law tradition. This divergence, however, is reconciled through international obligations under the TRIPS Agreement. For example, Article 41 requires member states to ensure that enforcement procedures are available under domestic law to permit effective action against infringements of intellectual property rights.<sup>53</sup> Accordingly, compliance with international standards is achieved not through identical mechanisms, but by adapting enforcement tools to align with the respective legal traditions of each country.

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<sup>51</sup> Teh Hong Koon, "Malaysian Intellectual Property: Dawn of a New Age," Skrine Advocates and Solicitors, accessed September 21, 2025, <https://www.skrine.com/insights/newsletter/april-2010/malaysian-intellectual-property-dawn-of-a-new-age>.

<sup>52</sup> Baker McKenzie, "Vietnam: From Tariffs to Takedowns: Doubling down on IP Enforcement," Law Business Research, accessed September 21, 2025, <https://www.lexology.com/library/detail.aspx?g=b1934e2a-f8fe-4f6d-95a5-6804a5e4d5d1&>.

<sup>53</sup> World Trade Organization (WTO), "Uruguay Round Agreement: TRIPS Part III: Enforcement of Intellectual Property Rights," accessed January 19, 2026, [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_05\\_e.htm](https://www.wto.org/english/docs_e/legal_e/27-trips_05_e.htm).

## IP AWARENESS AND UTILISATION

Another issue that warrants further attention is the persistently low level of awareness and utilisation of the IP system in Malaysia, particularly among local businesses, universities, and SMEs. For example, in Malaysia, MyIPO chairman, Dr. Mohd Zuhan Mohd Zain noted that although statistics indicate a steady increase in patent and brand applications over the past six years, only about 10% of local small and medium-sized enterprises (SMEs) have registered their brands and products with MyIPO.<sup>54</sup> Furthermore, at the launch of the National Intellectual Property Day and National Forum 2024, Deputy Minister of Domestic Trade and Cost of Living, Fuziah Salleh, reiterated that public understanding of intellectual property in Malaysia remains low.<sup>55</sup> Although Malaysia has a comprehensive legal framework, the number of patent filings by local entities remains disproportionately low compared to those by foreign companies. As mentioned earlier, more funding is anticipated to help close the gap and stimulate further R&D, which could in turn lead to a higher number of patent filings. However, the ongoing costs of maintaining IP rights are frequently cited as a key factor discouraging smaller entities from seeking or sustaining such protection.

Like Malaysia, Vietnam also contends with low public awareness of IP, although this is gradually improving due to government-led education campaigns and increased foreign direct investment. For example, Đinh Hữu Phú, Director of the Intellectual Property Office of Việt Nam, has emphasised the need for continuous support to small and medium-sized enterprises (SMEs) to enable them to leverage intellectual property (IP) rights in building stronger, more competitive, and resilient businesses.<sup>56</sup> It has also been reported that

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<sup>54</sup> Mohd Farhaan Shah, "Only 10% of Local SMEs Have Registered with MyIPO," Star Media Group Berhad, accessed September 21, 2025, <https://www.thestar.com.my/news/nation/2025/02/01/only-10-of-local-smes-have-registered-with-myipo>.

<sup>55</sup> Excel V. Dyquiangco, "Malaysian Official: Public Understanding of IP Is Still Low," The Apex Asia Media Group, accessed September 21, 2025, <https://asiaiplaw.com/article/malaysian-official-public-understanding-of-ip-is-still-low>.

<sup>56</sup> Viet Nam News, "Support to Be Provided to SMEs in Intellectual Property," accessed September 22, 2025,

approximately 60–70% of Vietnamese startups encounter difficulties related to IP, which undermines their ability to attract investment and sustain competitiveness.<sup>57</sup> Even with the existence of viable business models, many startups in Vietnam devote insufficient attention to IP protection, thereby weakening investor confidence and limiting opportunities for financial commitment. Despite legal reforms, Vietnam still faces difficulties in consistently applying IP laws across various administrative and judicial bodies, which sometimes results in uncertainty for rights holders. Apparently, a substantial proportion of IP infringement cases in Vietnam are resolved through administrative measures, with only a small fraction progressing to civil litigation or criminal prosecution. In 2023, for instance, out of 776 recorded infringement cases, 546 were addressed administratively, while only five resulted in criminal prosecution.<sup>58</sup> Since administrative enforcement does not provide for damages, and judicial remedies are widely perceived as cumbersome, costly, and time-consuming, rights-holders often resort to administrative channels despite their inherent limitations.<sup>59</sup>

## MANAGING AI CHALLENGES

Both countries are navigating the challenges posed by emerging technologies. Issues mentioned in the preceding discussion such as whether AI-generated works can be protected under copyright, whether AI can be listed as a patent inventor, and how to assign liability in the case of smart systems like autonomous vehicles or AI-driven

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<https://vietnamnews.vn/economy/934310/support-to-be-provided-to-smes-in-intellectual-property.html>.

<sup>57</sup> The Vinh, “Six in Ten Vietnamese Businesses Lack Adequate Intellectual Property Protection,” VietNamNet Global, accessed September 22, 2025, <https://vietnamnet.vn/en/majority-of-vietnamese-businesses-face-intellectual-property-challenges-2384987.html>.

<sup>58</sup> Tilleke & Gibbins, “The Statistics Are Retrieved from Giang Hoang Bach’ Posting on Tilleke & Gibbins,” accessed September 22, 2025, [https://www.linkedin.com/posts/tilleke-gibbins\\_in-2023-vietnam-addressed-776-cases-of-intellectual-activity-7239890509010194433-J-uv/](https://www.linkedin.com/posts/tilleke-gibbins_in-2023-vietnam-addressed-776-cases-of-intellectual-activity-7239890509010194433-J-uv/).

<sup>59</sup> IIPRD, “Most Common Intellectual Property Rights Problems: Focus On South - East Asia.”

healthcare tools, are largely unresolved. These legal grey areas require urgent attention, as they will shape the future of innovation ecosystems in both Malaysia and Vietnam.

## **CONCLUSION – WAY FORWARD**

In short, while Malaysia and Vietnam have made significant strides in strengthening their IP frameworks, both countries still face considerable obstacles. These include limited awareness, weak enforcement mechanisms, the need for more funding to boost the number of patent filings among local inventors and an urgent need to adapt laws to address digital transformation and AI. Strategic reforms, capacity building, and regional collaboration will be essential to overcoming these challenges and ensuring a robust IP environment that supports innovation and economic growth.

As intellectual property laws continue to evolve, both Malaysia and Vietnam must remain responsive to the latest developments to ensure their legal frameworks remain effective and relevant. All in all, this article has explored and examined certain aspects of the development of IP law in Malaysia and Vietnam, shedding light on both countries' unique legal trajectories, institutional capacities, as well as weaknesses, issues and persistent challenges.

Moving forward, being ASEAN member states, both countries can benefit from a more coordinated approach to IP governance that considers national legal particularities while striving for greater alignment in principles, enforcement mechanisms, and technological readiness. Enhanced cooperation, capacity-building initiatives, and knowledge-sharing platforms among ASEAN countries could significantly reduce disparities and create a more integrated IP ecosystem. Such efforts would not only facilitate smoother cross-border trade and investment but also empower local innovators, creators, and entrepreneurs. Ultimately, strengthening and harmonising IP regimes within ASEAN, grounded in shared values of fairness, accessibility, and adaptability, can act as a powerful catalyst for regional innovation, creativity, and sustainable economic growth in the digital age. Continued comparative research, policy dialogues and stakeholder engagement are essential to advancing this goal and

ensuring that IP law evolves in tandem with the region's socio-economic aspirations.

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