

# Asia IP

## INFORMED ANALYSIS



FEBRUARY 2022 • VOL 14 ISSUE 2

### ASIAN UNIVERSITIES CLIMB THE RANKINGS

# WHAT DOES IT MEAN FOR THE REGION'S IP SCENE?

As universities in the region continue climbing in global rankings, *Asia IP* asked lawyers how the surge of educational quality will affect Asia's IP scene

THE  
2022  
ASIA IP  
COPYRIGHT  
RANKINGS

### COPYRIGHT AND THE DEVELOPMENTAL CHALLENGES OF MOBILE GAMING

Gaming was already on the rise, but the pandemic sent the industry into overdrive. IP lawyers in China and India share how they're coping with laws that haven't always kept up with technology.

### AS FINTECH GROWS IN ASIA, ARE COMPANIES READY FOR ITS IP CHALLENGES?

Fintech has exploded on the world financial scene, pushed to the forefront by the lockdowns of Covid-19. *Asia IP* examines the IP challenges facing these companies in Asia – and shares how branding can make or break a fintech.



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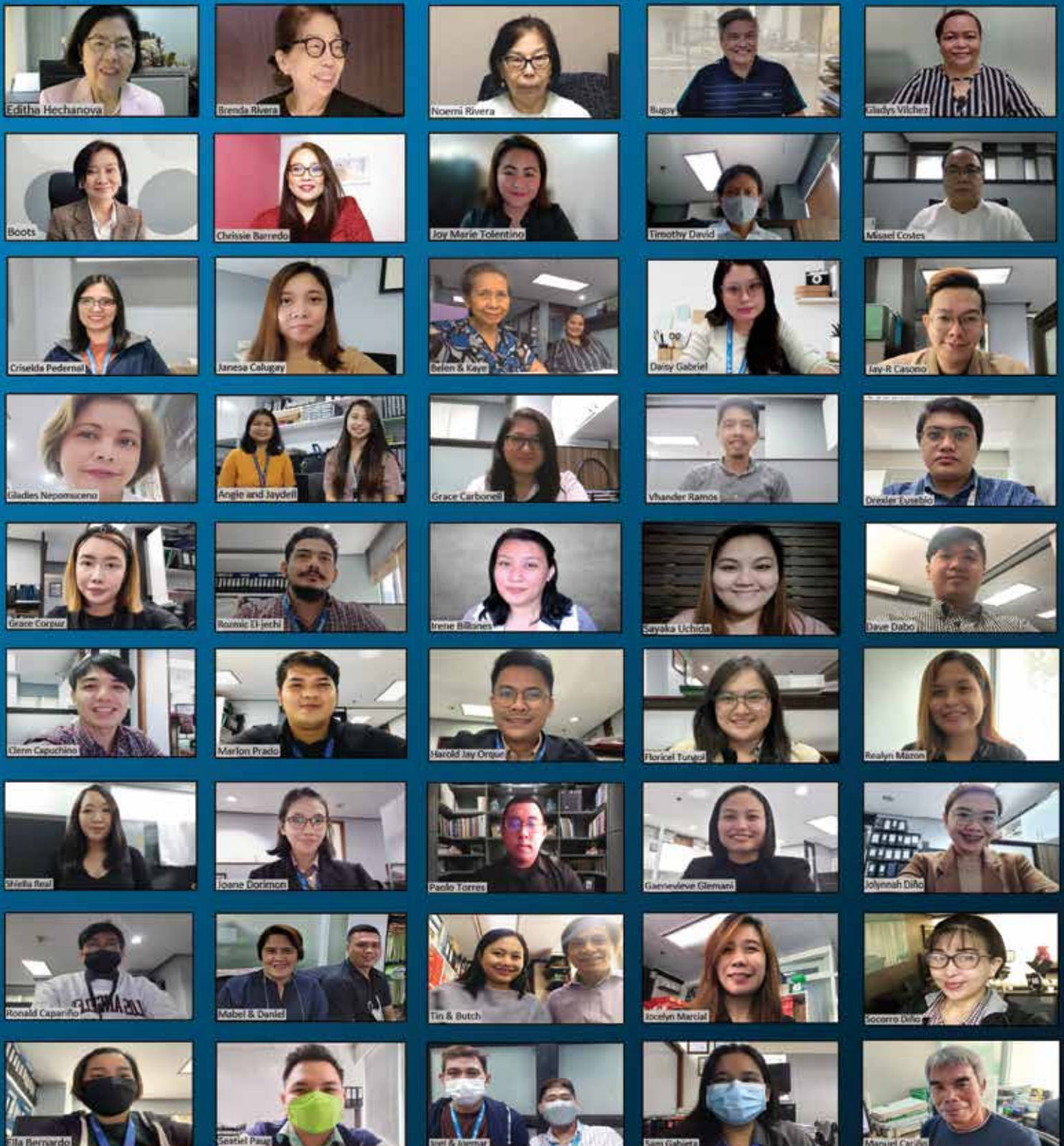
PATENTS FIRM OF THE YEAR

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—ESPIE ANGELICA A. DE LEON



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**“If then a practical end must be assigned to a University course, I say it is that of training good members of society. It is the education which gives a man a clear, conscious view of their own opinions and judgements, a truth in developing them, an eloquence in expressing them, and a force in urging them.”**

—JOHN HENRY NEWMAN, 19<sup>th</sup> century English theologian and scholar

## Climbing the rankings

**T**here's exciting news on the academia front: Universities in Asia are climbing the rankings of the best universities in the world. Some have even penetrated the elite Top 20 list, which has long been dominated by universities from the United Kingdom and the United States.

You know the type: Oxford, Cal Tech, Harvard, Stanford, Cambridge and MIT made up the Top 5 in the most recent list. Six universities are named due to a fifth-place tie between Cambridge and MIT.

But two universities from China, Peking University and Tsinghua University made the Top 20, while the National University of Singapore placed just outside the Top 21, coming in at No. 21. The rest of the Top 100 is rife with universities in Asia and the Pacific, with China, Hong Kong, Japan, Singapore, South Korea and Australia all placing multiple institutions in the Top 100.

The newly released rankings spurred our interest, and Espie Angelica A. de Leon set out to find out how highly ranked universities will impact local IP scenes in the coming years.

IP lawyers are, to say the least, optimistic.

“This will open a host of opportunities such as foreign and domestic investments,” says Karen Abraham, partner and head of the IP practice at Shearn Delamore & Co. in Kuala Lumpur. “If local universities are able to exploit local talent, attract foreign talent and retain both, the respective Asian countries will be the prime beneficiaries of this talent and resource.”

Yen Vu, executive and country manager of Rouse Legal Vietnam in Ho Chi Minh City, called the increased representation of Asia's universities in the rankings “a satisfying result” of Asian countries' efforts in innovating and funding for R&D activities. “With this solid proof of their effective IP strategies, China, South Korea, Japan and others will be highly motivated to keep up with their innovation efforts and funding for modern technologies,” Vu says.

As top-notch universities from Asia make their presence felt and establish their footing among the best from the western world, one can only anticipate what this will lead to in terms of regional and global innovation.

We look forward to being part of the journey.

Darren Barton  
PUBLISHER

Gregory Glass  
MANAGING EDITOR

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## ASIAN UNIVERSITIES CLIMB THE RANKINGS

# WHAT DOES IT MEAN FOR

# THE REGION'S IP SCENE?

As universities in the region continue climbing in global rankings, **Espie Angelica A. de Leon** asked lawyers in China, India, Hong Kong, Malaysia and Vietnam how the apparent surge of educational quality would affect their IP scenes.

**I**t cannot be denied, more and more universities from Asia are breaking into the Times Higher Education World University Rankings (THE). Some have even penetrated the elite Top 100, which otherwise continues to be dominated by universities from the United Kingdom and the United States.

In THE's 2022 rankings, Tsinghua University in Beijing made it to the Top 20 for the first time, making it the highest-ranked university from Asia.

In its 2022 rankings, covering 1,000 educational institutions in 100 countries and territories, Peking University joins Tsinghua in the magic circle of a top university in the world, going for 10th place. National University of Singapore is at 11th, followed by the University of Hong Kong, with University of Tokyo, 15th. Tsinghua Technological University, 16th, and Chinese University of Hong Kong, 17th, are also in the Top 20.

**There's more:**

In the 2022 edition of THE's World University Rankings, the Top 100 list for the first time includes an Asian university, Tsinghua University, at 16th place.

In 2022, the top 100 list for the first time includes an Asian university, Tsinghua University, at 16th place. The 2022 edition of THE's World University Rankings, covering 1,000 educational institutions in 100 countries and territories, Peking University joins Tsinghua in the magic circle of a top university in the world, going for 10th place. National University of Singapore is at 11th, followed by the University of Hong Kong, with University of Tokyo, 15th. Tsinghua Technological University, 16th, and Chinese University of Hong Kong, 17th, are also in the Top 20.

**Regional Impact**

How will these developments impact innovation and investments in AI and other modern technologies in Asia as well as its intellectual property arena?

"I believe that this will open a host of opportunities such as foreign and domestic investments," said Karim Ghannam, partner and head of the IP practice at Shearman & Sterling LLP in Kuala Lumpur. "If local universities are able to capitalise local talent, attract foreign talent and retain both, the respective Asian countries will be the prime beneficiaries of this talent and resources. If the potential of these students and their universities are realised, it could stimulate funding opportunities that would drastically impact innovation efforts, investment in modern technology. This in turn would contribute to the growth of the IP arena in Asia. With technology advancing at a rapid rate, new systems would need to be adopted for the protection of IP."

According to Yen Yu, executive and creative manager of Shearman Legal Ventures in the City of Knowledge, research productivity and research income, which are among the rankings' criteria, have much to do with the local IP strategy and legal regulations.

"The increased representation of Asia's universities in the rankings, in the very first place, is thus a satisfying result of Asian countries' efforts in increasing and funding for R&D activities. With the solid ground of their effective IP strategies, China, South Korea, Japan and others will be highly motivated to keep up with their innovation efforts and funding for modern technologies," Yu said.

Indeed, behind the glow of this positive news, the Asian countries are also working hard to improve their IP systems and practices. The Asian countries are also working hard to improve their IP systems and practices.

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"Companies have become a valuable source for research funding, and this allows universities to gain exposure towards the most significant problems to be addressed in the industry, while it also allows the companies to gain the latest insights from the research centres."

-NIA SHENG, Founder and Partner  
Strategy First Group, Beijing

"For the most part of the century, Chinese and Japanese students have been part of the rising numbers of international students at western universities. However, as facilities in Asia continue to improve and receive the same recognition and funding as west, the shift is bound to happen."

-ANTHONY JACOBSEN, Partner  
Investment Partners North Asia,  
Chicago

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"With the solid proof of their economic strategies, China, South Korea, Japan and others will be highly motivated to keep up with their innovation efforts and funding for modern technologies."

-SENYI, Partner  
Strategy Management, Hong Kong/Beijing, the Netherlands

"Asia has been moving new areas of IP development with non-ferrous talents, blockchain and average growing ecosystem. I am of the view that the view will continue in certain areas. But traditional west-dominated industries will likely see more developments continue more in the west."

-DEANNA WONG, Partner  
Strategy, Hong Kong

"If local universities are able to exploit local talent, attract foreign talent and retain both, the respective Asian countries will be the prime beneficiaries of this talent and resource."

-KAREN BRADSHAW, Partner  
Director of the Practice Group  
Strategy & Co., Kuala Lumpur





to leader in whose own nation also has National Technological University, Singapore at the top.

leader in the Eastern Top 25, which ranks the most innovative universities in Asia-Pacific. Seoul National University ranked in its own rankings, with others including the release of patent filings and research paper citations. Universities from China, South Korea, Japan and Singapore rounded out the top 25.

"I think this competition among universities will spread further competition in terms of research, innovation and IP events," said Wang.

Will this trend involving universities from Asia continue even after the Covid-19 pandemic?

"I think the trend will continue. Universities have earned a reputation for innovation and research, and with all the advances in technology, we will see more and more universities competing in the region."

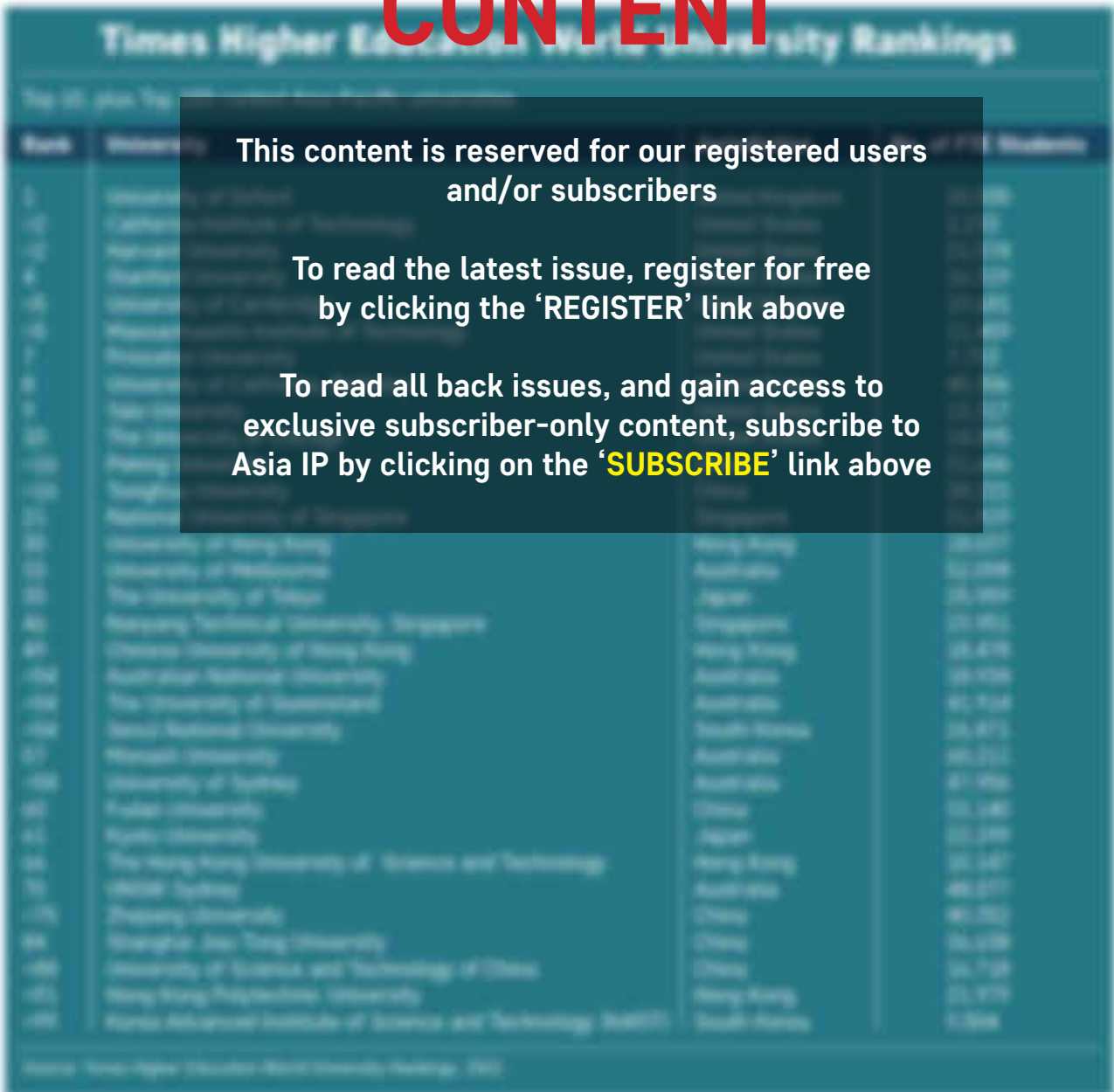
said Wang.

"It is difficult to follow if the region has taken the pandemic situation into account," said Jagadeesan, "and if it was factored in their analysis of the results."

However, Jagadeesan added that developments in the region, which include increased budget allocations for education, ability to raise capital among the universities and other favorable opportunities cannot be discounted.

The writing is on the wall. Top-notch universities from Asia are clearly fast-moving making their presence felt in the global map of academic institutions. As they establish their footing among the best from the western world, you can only anticipate what this will lead to in the future. The region is a hotbed of innovation and research, and with all the advances in technology, we will see more and more universities competing in the region.

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# COPYRIGHT AND THE DEVELOPMENTAL CHALLENGES OF MOBILE GAMING

Gaming was already on the rise, but the pandemic sent the industry into overdrive. *Excel V. Dyquiango* reports on how IP lawyers in China and India are coping with laws that haven't always kept up with technology.

**T**raditionally, gaming companies have built their games from the ground up, creating the material, the codes and the engines that allow the games to run and function. But a growing number of gaming companies are abandoning this model in favour of partnering with international studios. This partnership has led to mobile game companies gaining the rights to develop mobile versions of their international studio partners' famous games.

This has resulted in the generation of sizable fan bases from the moment the game gets published. In turn, this increases brand recognition of popular titles and boosts the size of the market when there are new releases related to popular titles, and allows mobile gaming companies to produce games that remain

relevant to gamers.

China and India have both embraced this new mobile gaming industry.

In 2011, Tencent, which is now the largest game publisher in the world, paid US\$400 million for a 93 percent stake in Riot Games, the developer of League of Legends; four years later, it took full control over Riot Games. In 2012, Tencent invested US\$330 million in Epic Games. In 2018, Tencent snatched up a majority stake in Grinding Gear Games. In fact, today there is a long list of companies in which Tencent has invested, including Ubisoft, Activision Blizzard, Supercell, Platinum Games, Yager, Frontier Developments, Kakao, Paradox Interactive, Fatshark, Funcom, Sharkmob and Discord.



"When you're searching for an IP to work with, you should always consider their audience. It's about what they want or would enjoy - that's what's going to attract more players."

- NARESH  
PUNNA, IP and  
entertainment  
advisor  
Chairman  
of National  
Forum, New  
Delhi

"A game's identity starts from its name and then moves to its graphics and, most importantly, characters. While a game's name needs to be picked according to trademark law, a game's character needs to be built around keeping copyright concerns in mind."

- NEELI KUMAR,  
Partner, Jaffer & Jaffer

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Measures to address copying in the mobile gaming industry have so far mostly focused on mobile gaming companies to ensure that their games are not being copied."

...on actual...  
...rights, goals,  
...with content,  
...which may not be part of the  
traditional IPAs, but are protected  
as quasi-proprietary rights or as  
confidential information."

- NEELI KUMAR, Partner, Jaffer & Jaffer,  
New Delhi

"It goes without saying that IP protection on the characters and their story is one of the most important elements. Chinese courts have long accepted the rule on the copyrightability on the general scenes, work of art and literary works."

- EMMY GONZALEZ, Partner, IP Law &  
Intellectual Property, Shanghai

He adds: "It goes without saying that IP protection on the characters and their story is one of the most important elements. Chinese courts have long accepted the rule on the copyrightability on the general works, work of art and literary works. In the meantime, for certain elements, which they used to believe non-copyrightable based on the expression definition, function, had to be granted protection based on anti-unfair competition law. The court started granting certain copyright protection for elements (which were expressed enough)."

Case litigation is another developmental challenge. This used to cause trouble when people plagiarised the most important element in the game before developing it.

"In most cases, Chinese courts do not have enough content," says Frank Li, an associate at IFLI Law Firm in Beijing. "The game IP protection went through trademark and unfair competition."

He adds: "Chinese courts deemed that video games constitute a work under copyright law, and thus protect each single element, such as characters, maps, maps, and so on."

"In the meantime, the copyright law can protect the content of the game, but not the expression. The unfair competition litigation is a developer through... and function... all of which constitute the work."

This is where the IFLI Law partner and head of intellectual property, sports and gaming, at IFLI of Tian in Singapore, who adds that game copying or cloning games is a significant challenge to developers in the mobile gaming industry.

"Developing a game has been made easier today with the advent of state-of-the-art technology," he says. "There are many easy-to-use programmes and tools to develop games that are readily available on repositories such as Ubbi and Ubbi. The relative ease and low cost of developing mobile games here, on the other hand, also made it easier for a mobile game developer to copy elements of a game and pass it off as their own in order to generate revenue at the expense of the mobile gaming company that owns the IP in the mobile game that is copied."

He adds: "Measures to address copying in the mobile gaming industry have so far largely placed the responsibility on mobile gaming companies to ensure that their games are not being copied. Apple's App Store and Google Play both have reporting systems in place for application developers to report an application that

they believe infringes on their IP rights."

In writing these challenges, Lee says that mobile gaming companies should be proactive in developing an effective and robust IP strategy.

"They should consult IP lawyers with the relevant experience to help identify what IP in their games should be protected and to advise on the best and most cost-effective way to obtain such protection, to monitor any infringing activities and to take the appropriate enforcement action," he says. "An integral part of a good IP enforcement strategy also needs to include the educational aspect - building awareness among the industry as to the importance of respecting IP."

Finally, Lee says, the enforcement of IP should be done in a way that does not harm the mobile gaming industry. "The IP of popular mobile games made in India has been a support for the game. On the other hand, the IP of a game is a commercial gain for themselves by creating their own spin-off products and content. A balance needs to be struck between allowing law to protect the rights of IP owners and promoting the progress."

India's booming industry has attracted many developers and investors. However, the industry is still in its early stages and faces many challenges. The government has taken several steps to support the industry, but more needs to be done to create a favourable environment for growth.

The gaming industry in India is still in its early stages. While there is a lot of potential, there are many challenges that need to be overcome. The government has taken several steps to support the industry, but more needs to be done to create a favourable environment for growth.

There have been several efforts to build on these signed distribution agreements with leading Indian mobile game developers in order to distribute their products in India. While operating gaming businesses is easier in countries where gaming is legal, operators face challenges in India, where laws are more stringent. With the advent of social and casual games both offline and online, the gaming industry can now be used to comprise two verticals - gambling in both traditional and online forms, and skill-based social or casual gaming. However, under certain Indian laws, gambling activities are referred to as gaming.

Siddhant Sharma, partner designate at IFLI Partners in New Delhi, says that the developmental challenges that the gaming industry face include licensed and unlicensed or illegitimate contracts, the use of generic words as brands or trademarks, and third-party APIs and proprietary data.

"Using appropriate written or developer contracts with the game developer can significantly reduce the challenges faced on account of licensed

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an "irreparable" enjoyment of rights and their enforcement is "difficult," he explains. "While identifying of gaming software can often be a challenge to users when the gaming companies do not adequately protect the software, the rights against third party offerings, however, identifiable or identifiable, are not the same as the rights against third party offerings."

There is another challenge in terms of branding. "The gaming companies are aware that such a brand name and trademark are valuable assets and they will do everything possible to protect them," he says. "The companies should also not use the same brand and name for their other products and services."

With the growth of online sports and gaming, it is important to protect the rights of the users. "The gaming companies should consider the rights of the users and protect them from the risks of the gaming software," he says. "The gaming companies should also consider the rights of the users and protect them from the risks of the gaming software."

Additionally, users protecting the intellectual property of a game will not suffer unless the proprietary software is copied. It is not clear if the law does not require to enforce rights. If the owner of a game has financial resources, it would have an interest in protecting the game from third parties and especially third competitors. Other game owners may consider enforcing such activity by third party owners, which will be considered as a third party activity unless the owner of the game has other enforcement strategies can be derived based on the circumstances and resources of the game.

Palmer adds, "The gaming industry is going to find ways to protect its rights."

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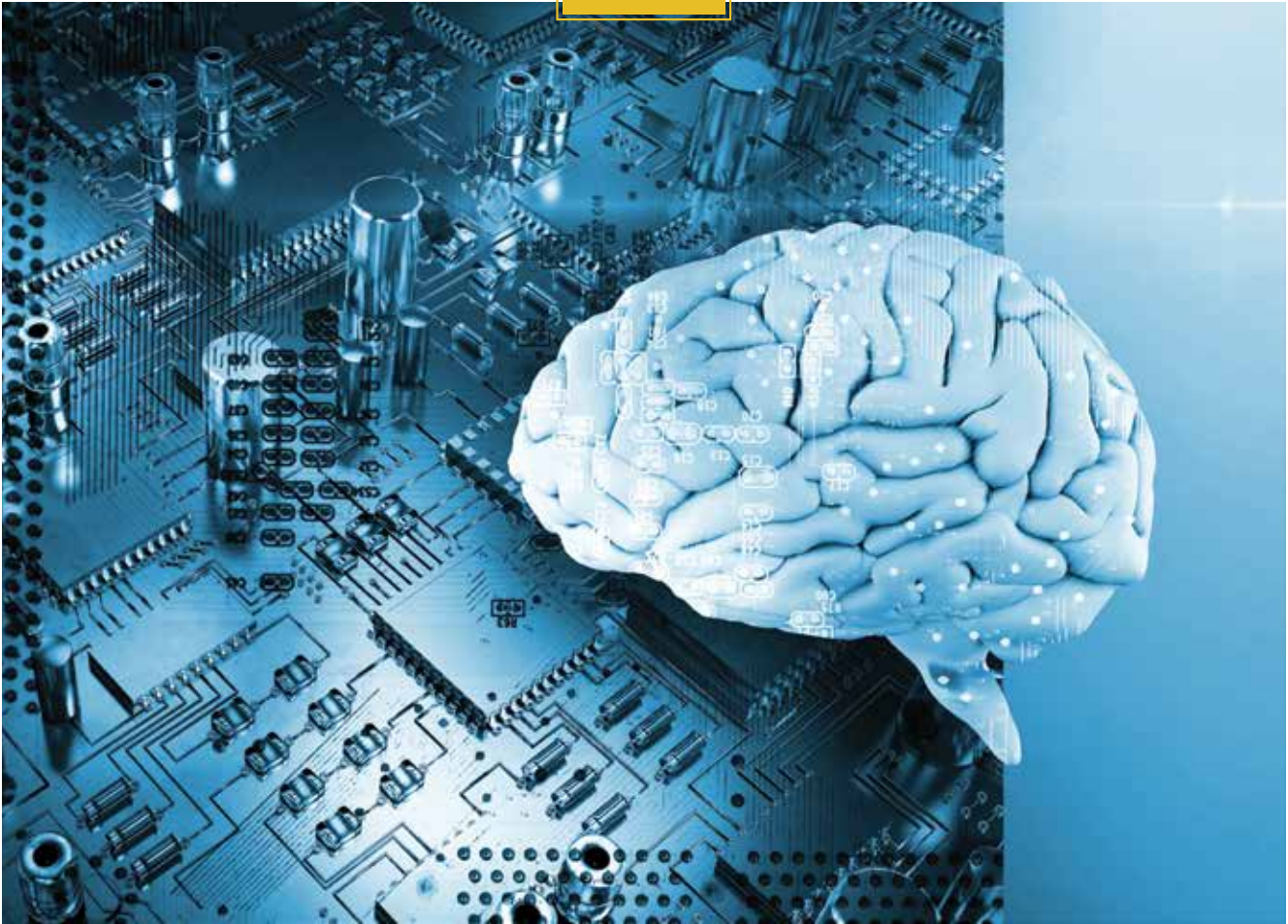
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# BRAIN INTERFACING, COPYRIGHT AND THE PATENT SYSTEM

Brain interfacing has been gaining traction since Elon Musk's investment in Neuralink. Lawyers discuss how future brain-computer collaborations might affect copyright and patent laws with *Excel V. Dyquiango*.

**T**echnology has evolved in extraordinary ways. Brain interfacing, for one, has been gaining traction since Elon Musk's investment in Neuralink, a project with the mission to develop a brain-computer interface (BCI) that improves human communication in light of AI. Moreover, Facebook also has plans for a game-changing BCI technology that would allow for more efficient digital communication.

While brain interfacing technology can boost creativity since it has the ability to enhance the human brain, such technology, however, also decentralizes the autonomy of an individual in his innovation and creation.

"The main concern herein would be the difficulty in pinning the exact moment of creation of the thought

or determining the exact individual from whom the thought originated in order to determine the authorship or inventorship since brain interfacing would involve merging multiple people's thoughts as computer bits on a server to conceive an invention," says Saumya Kapoor, an IP attorney at Adira Legal in Delhi. "It would also be improbable to determine the ownership when the volume of thoughts would multiply. Thus, the main question which would arise with brain interfacing would be, who is the owner of the thought generated in brain interfacing? Moreover, misappropriation of the innovative or creative work of an individual by a goliath with access to such brain enhancement technology would also pose issues."

With both copyright and patent law founded on the

principles of protecting the creativity and innovation of an individual who produces or invents something, the public interest may require the law and their incentives to apply for patents, either jointly or with other people.

In the patent system, it is not just an individual who creates but it is the organization of his surroundings that help him create. However, while on paper it is the individual who creates, in reality, most of the creation or invention are created or used by others, either by direct or an assignment of rights from the creator himself or through the concept of work for hire. Thus, the contemporary legal structures already encourage within themselves the ability to assign the rights of the individual to an organization, company or group.

"The law of patents is not just an abstract concept, but towards a more enhanced one individual. It is not just a legal right, but a right that is based on the principle of reciprocity. This will not be a right that is granted to an individual, but a right that is granted to a group of individuals, which is the essence of a corporate ownership of intellectual property."

dedicated to brain interfacing, another issue that could arise in determining the owner in case of an anonymous neural contribution. Protecting the rights of such owners might prove to be challenging and we might have to take measures in protecting the invention in other ways or just due to such cases."

The public "another way to determining ownership may be if artificial intelligence is allowed to be listed as an inventor, as brain interfacing patents may also arise within the same context. Eventually, the final output may be created by AI after accumulating all the ideas from the other brains in the brain net and then transferring a refined version of this combination of ideas to the inventor brain. This patent law has been developed to protect the rights of an individual, but not an artificial intelligence. In any case, we should be able to handle such cases in the future."

James Street, a senior associate at Chaffin, Layman & Pincus, LLP, says that with brain interfacing, the patent law should be provided to be the essence of a right that is granted to a group of individuals, instead of protecting

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—SARITA S. SPINALE, IP attorney  
Atlanta, Georgia, New York

—JAMES STREET, senior associate  
Chaffin & Layman, New York

—SUNGJUNG LEE, attorney  
Seoul, South Korea, New York, Hong Kong



an individual's intellectual property, it would be protecting the intellectual property of the brain cells such as multiple brains connected together via computer interfaces.

"With respect to the patent system governing the progress of science and useful arts, it would continue to do the same, but the patent system would need to be more robust than ever to include several possibilities of claims from all the brains to the brain not contributing to the final output," she says.

She adds, "There are also some concerns about the possibility of a brain-based system becoming the main way for a path for brain interfacing to merge into the patent laws. In a way, the final output is being created by an artificial brain. This could mean that the brain-based system is being treated with better learning capabilities and administrative thinking rights to its generated inventions. It is important that we as a society be prepared for the possibility that we as a society for reporting improvements in our field, which would have otherwise been impossible to do so or would have taken a long time of effort with an artificial system."

The actual device... Taking the... system... should be... process... then... created by... thoughts are...

contributors to a patent's claim and whose contribution goes to the heart of the invention becomes increasingly challenging, says Virginia Chin, a partner, Beijing Wuyang Law Firm in Beijing. "When this happens, the burden of proving inventorship -- to prove whether a person merely contributes to a patent claim, or to the heart of the invention -- should be placed on the parties who claim inventorship to an invention. These parties should produce evidence on their respective input to the patented thought. There are advantages to be realized by the parties involved and there is a need for identifying of inventorship. Considering this would be a very tough job for a human adjudicator to complete an intricate system and a large volume of data might be involved into the system to help sort out the facts."

She adds, "Creating the device to interact with respect to brain interfacing, to actually protect individual identities or contributions to an advanced patent, we will need to study and analyze the various flow within every brain to be able to decipher what the thought process of every single brain was to identify their exact contribution to the output. While this may sound like a distant reality currently, at the pace with which we are seeing technological development, this is only the future."

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**What does the future hold for brain interfacing?**

"While this new technology will be facilitating communication of thoughts and social collaborations, it could also have significant impacts on ethics, freedom of thought and expression, right to privacy, the IP system, to name a few," says Chin. "Legislators should take an in-depth consideration of the technology and derive a legal framework that could utilize brain-computer interfaces to enhance the progress of science and useful arts rather than limit it."

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# CHATBOTS: A WAY TO IMMORTALIZE THE DEAD?

When Microsoft secured a patent for conversational chatbots to mine data from a person’s social media history, observers wondered how it might affect the person’s intellectual property rights. *Excel V. Dyquiangco* reports.

**S**eason two of the sci-fi series *Black Mirror*, which premiered on Netflix almost eight years ago, had an unsettling episode about grief. The show introduced audiences to Martha, a young woman grieving the death of her boyfriend, Ash, in a car accident. Soon, Martha learns about a digital service that enables her to connect with a chatbot version of her late partner at his funeral. She agrees to it, although reluctantly.

Interestingly, the digital service used on the show can now apparently work in real life. In January 2022, Microsoft secured a patent for an app that could effectively reincarnate people as a chatbot. The machine tech behemoth patented “conversational” chatbots based on a single human, living or dead.

Like the app on *Black Mirror*, the technology will collect data from a person’s social media posts and text messages.

Creepy, isn’t it?

Andrew Cobden, counsel at Hogan Lovells in Hong Kong, explains: With the invention directed at creating a conversational chatbot of a specific person interacting with a human user emulating the personality of a particular person, it takes information about a specific person from social data (images, voice data, social media posts, electronic messages, written letters) in order to formulate responses to a human user’s input.

“The specific person being emulated could be a friend or a relative of the human user, a celebrity,



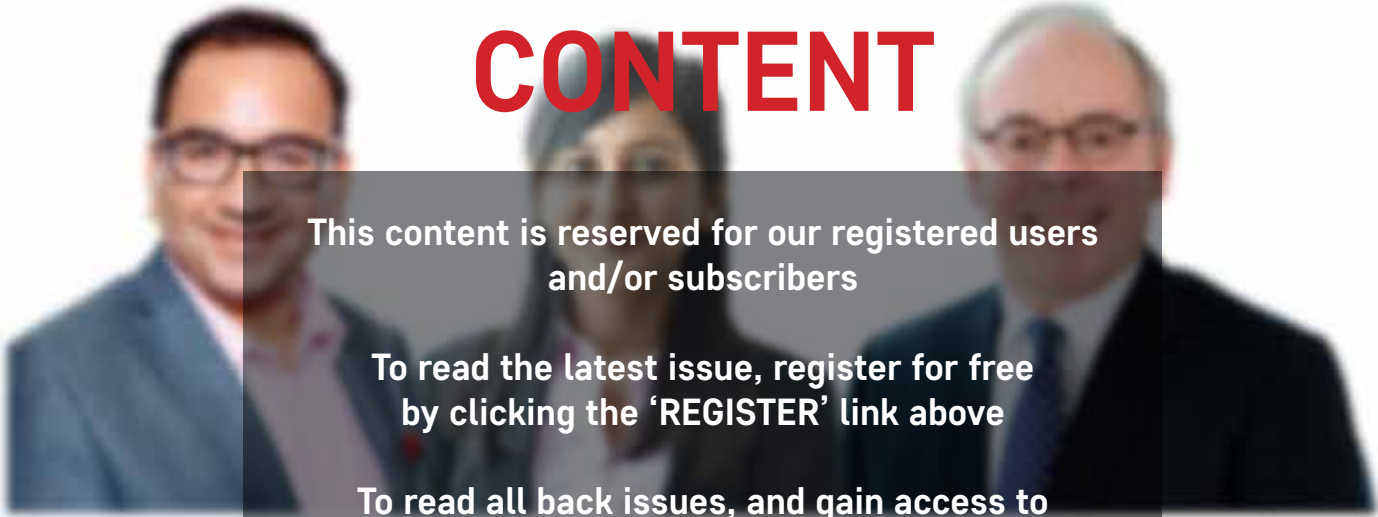
**"The use of data and other personality traits of a person without permission would raise privacy issues and personality rights claims."**

**—RANJAN KAPILA**

**"With the introduction of this technology, several issues pertaining to who shall possess the rights to robust the digital persona of the deceased also need to be addressed."**

**"The chatbot operator will need to check if the chatbot is using copyright material. For example, there could be copyright in the social data being accessed and processed by the chatbot. Any text or recorded media created by or about the specific person may attract copyright."**

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Individuals both directly and indirectly affected by these advances need to be aware of the changes in environmental factors as well as factors of the surrounding environment. Thus, it is still unclear whether specific changes in the surrounding environment trigger programmed reactions of advanced artificial emotional intelligence to love that felt, which remains integral to their functioning."

Ranjan Kapila, managing partner at SRA, Technology and IP advisors in Coimbatore, adds that when "scrambling" a person's personality, the patent infringement claim will assess whether a third party has, without authorization, copied the technology and not the underlying data that would help the technology to deliver the final result.

"The use of data and other personality traits of a person without permission would raise privacy issues and personality rights claims," he says.

However, he adds that one of the major challenges would involve around ethical issues as the technology controls virtual existence of a person and somewhat goes against the law of nature by creating a virtual personality of a dead person.

...the wider social... and writings... and privacy issues," he says. "Building a prototype... based on the technology is anticipated to face regulatory hurdles and, once launched in the market, there is also a risk of illegal activities and data privacy issues. To deal with privacy issues, a user's permission for the creation of a chatbot for their profile would be necessary."

### The future of chatbots

"In the case of the plans of that company, the patent does indicate that the possibilities for artificial intelligence have advanced from robots to creating virtual and interactive models of real people," says Kapila. "To ease these chatbots are eventually used to immortalize the dead, it shall be path-breaking in the domain of AI development."

For Kapila, this is still a disruptive technology. "This is disruptive technology which would require a number of legal and ethical hurdles to be crossed before this can be rolled out. The news reports suggest that they do not have plans to build products based on the technology." ❖



# HOW LIVE STREAMING CAN EXPOSE YOU TO CHARGES OF COPYRIGHT INFRINGEMENT

Just about anybody can be a live streamer these days. *Excel V. Dyquiangco* explains how posting live streams and other videos on social media can be fraught with danger for those who aren't aware of the role of copyright and other IP laws.

**W**ith the number of live streams and videos on different social media platforms increasing dramatically, many celebrities and artists have built a larger engagement with fans, given the massive increase in the number of people tuning into live streams. For instance, when India launched on Instagram, through its Instagram Live feature, a virtual music festival bringing together 14 popular Indian artists, such as Armaan Malik, Lisa Mishra, Naezy, Arjun Kanungo and others, encouraging users to sit in their living rooms and experience live music, the social platform reported a massive 60 percent rise in its live views.

But with such live streams and videos comes social responsibility. As Benjamin Cheong, a partner at Rajah & Tann in Singapore, points out, every country has internet content laws and regulations

and the requirements and prohibitions of the laws and regulations in each country are different. While Singapore has the Internet Code of Practice which states that “prohibited material” includes materials that “depicts nudity” and “glorifies, incites or endorses ethnic, racial or religious hatred, strife or intolerance,” Indonesia has the Indonesian Copyright Law which requires a specific permit from the copyright owner or copyright holder because under Article 9 of the Indonesian Copyright law, the owners or the holders are exclusively entitled to an economic right of the creation.

“Given the very nature of live streaming, the person who is doing streaming may inadvertently put out content that is prohibited by law – for example, making a statement that may be seen to be endorsing hatred against a certain race in Singapore,” says

Cheng, "Such statements are quickly broadcast and viewed by many users and the person would not be able to retract those statements. The risk of breaching these laws and regulations can be very real. This gives that the live stream can be viewed by people in other jurisdictions, there is a risk that the person doing the streaming may be in breach of the laws of another country."

He adds, "For live streaming for a commerce, it is also important to be aware of advertising and consumer protection laws that may apply. For example, you should be avoided to make any false advertisements or misrepresentations when conducting live streaming."

For his part, Jonathan Poon, Senior Counsel, managing partner at law firm, says, "In an app, the user is not allowed to copy, reproduce, or transforming or distributing any copyrighted works without the consent of the said copyright law. Therefore, if someone conducts the streaming by using the application to share a post from the copyright owner or copyright holder."

**When live streaming**

Cheng says the content creator or artist should be familiar with the platform that they are using.

"There will be some terms and conditions of the platform that they should be aware of. This is important for artists to read and understand."

He adds, "When you are using third-party content in their own live stream or content - subscriptions such as if it's available on the internet, I am free to copy and reuse it or I am not charging for my live stream and therefore it is free for me to reuse it as I do not make a profit out of it or I am allowed to reuse the content of others as long as I attribute it to the owner of the content - these assumptions may not hold true in all situations and care should be taken before using third-party content."

"Always check the source of the content and see if it is available for free," he says. "If in doubt, get permission from the original content owners or do not use it at all. I have seen many individuals who receive legal letters demanding for large amounts of damages for using content in an unauthorized manner."

Kennedy adds that while it is important for the content publisher or parties who wish to conduct a live stream in any application to obtain a professional consent as a show of good faith, the content publisher should not wait until being contacted by the owner or holders of the copyrighted works.

"We never know whether they will contact you in order to establish a business proposal, or whether they will contact you as part of their litigation strategy in enforcing their rights," he says. "The use of such copyrighted works without a proper license or proper permit might expose the content publisher or the parties who conducted the streaming or live streaming to serious legal consequences."

Once the content creator is using, modifying the content of creation, adapting, rearranging, transferring, accessing the creation, or communicating the creation in any means, then he is liable for infringement if done without proper consent from the copyright owner.

"If you are a content creator, and they are liable for infringement, I would suggest that the parties should contact the relevant owner of the copyrighted works to show good faith and take responsibility for their action. If you, for whatever reason, share such communication with the relevant owner or holder of the copyrighted works, it might cause you to be a very active participant in the infringement under the law."

He adds, "When you are using third-party content in their own live stream or content - subscriptions such as if it's available on the internet, I am free to copy and reuse it or I am not charging for my live stream and therefore it is free for me to reuse it as I do not make a profit out of it or I am allowed to reuse the content of others as long as I attribute it to the owner of the content - these assumptions may not hold true in all situations and care should be taken before using third-party content."

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"We can understand this more easily by comparing it to when a person attending a concert records the entire concert or parts of the concert to be uploaded on YouTube or Instagram without the permission of the artist or the production company which might own the songs the artist performed during the concert," says Eugene Walk, a partner at Lall & White in New Delhi. "Such an act would amount to copyright infringement. Similarly, in live videos, when you screen record the artist's performance, save such video on your device and upload it to Instagram or YouTube, there are could also amount to infringement. Such upload of content, which is the intellectual property of the artist, the composers, the record label, and being displayed to an audience cannot be considered the creation of the uploader and is copying another individual's work."

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"Recording a concert to be uploaded without the permission of the artist would amount to copyright infringement. Similarly, in live videos, when you screen record the artist's performance and upload it to Instagram or YouTube, you are also committing copyright infringement."

—**SHAWN WALSH**, Partner  
Law & Society, New York

"The use of such copyrighted works without a proper license or proper permit might expose the content publisher or the parties who conducted the streaming or live broadcast to legal consequences."

—**JUSTIN AND PERDITA  
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"While publishing content, you are expected to have all necessary legal rights to the content on live stream. If you do not have the necessary legal rights to the content, you are liable for copyright infringement. They are liable to agree to indemnify the platform for any legal expenses incurred from the breaches of these representations, including unintentional ones."

—**GENYUO CHANG BYEN**, Intellectual Attorney  
L.S. Law & Co., Atlanta

"Always check the source of the content and use it only if it is available for public use. If in doubt, do not use it at all. I have seen many individuals who receive legal letters demanding for large amounts of damages for using content in an unauthorized manner."

—**BENJAMIN CHONG**, Counsel, Law & Society, Singapore

This price does not be considered a violation of the principles of copyright which requires originality, non-copying for the owner to claim a right over the work."

He adds that it doesn't matter whether such screen recording of a live performance was done for non-commercial or non-commercial purposes. Even in these situations, unless permission has been given by the performing artists or the owner of the copyright,

the act of screen recording such performances will amount to copyright infringement.

"It is important to note that all these copyright infringement implications pose a big threat to the content creator and, thus, puts the live streaming in a major risk as all the above references amount to blatant violation of the basic principles of copyright," he says. "There are other issues as well, for instance, including





# CRYPTOCURRENCY AND IP

As cryptocurrencies gain traction, some of their creators are learning difficult lessons in the world of intellectual property protection. *Espie Angelica A. de Leon* examines just how crypto can be protected.

**C**ryptocurrency (crypto) is a type of digital currency which is unregulated and runs on the blockchain technology. Some of the more popular crypto are Bitcoin, Litecoin, Ethereum, Ethereum Classic, Dogecoin, Dash, Ripple, DESO and SafeMoon.

With the use of cryptography, transactions using crypto are secured and the transfer of assets is verified. Blockchain also helps secure crypto by preventing the emergence of counterfeits.

If this is the case, what kind of intellectual property protection is needed for cryptocurrencies?

“Although an individual coin on an established blockchain like Ethereum or Bitcoin is ‘near unhackable,’ the IP surrounding them remains vulnerable to infringement,” said John M. Mulcahy, a partner at Finnegan, Henderson, Farabow, Garrett & Dunner in Washington.

“The brand names surrounding different types of cryptocurrency and the innovative ways of creating or utilizing cryptocurrency should warrant IP protection just as other protectable trademarks and patents,” said Eugene Low, a partner at Hogan Lovells in Hong Kong.

The past decade has seen a continued increase in the number of patent applications filed before the United States Patent & Trademark Office (USPTO) involving “Bitcoin” or “cryptocurrency.” The number of applications even more than doubled in 2018 compared to 2017. Technology startups and established financial houses and information technology companies such as Bank of America, Goldman Sachs, Microsoft and Intel are filing these applications. Some of these are for technologies that make crypto transactions even more secure, to aggregate various cryptocurrencies, provide reward points for cryptocurrency transactions and other novel ways of using blockchain.



have suggested that copyright protection for software may be less broad than was previously thought."

### The future of IP in the crypto world

With the growing number and rising popularity of cryptocurrencies, as well as of blockchain and NFTs, the world is poised to see an uptick in innovation and IP-related activities.

"We see an increasing number of cryptocurrency-related patents being applied for and granted," said Law. "It will be interesting to see if there will be more IP case law on this topic."

"Although it's true that there has not been much IP case law, copyright protection is of use," said Roberts. "That work is being done by the courts. It will be interesting to see if there will be more IP case law on this topic. At some point, the future of crypto will be determined in litigation."

Stakeholders in the US are already preparing for this. In March 2021, the US Chamber of Digital Commerce in Washington established the Blockchain Intellectual Property Council (BIPC) to promote innovation in the blockchain space by assisting companies with IP issues in relation to the technology. Some of the BIPC's member companies, which includes leading stakeholders in the cryptocurrency industry, joined the Crypto Open Patent Alliance (COPA), whose members "pledge never to sue their crypto technology patents against anyone, except for deliberate misuse, effectively making their patents freely available for all to use," as stated in COPA's website.

Meanwhile, COPA members IP protection in the blockchain space. The alliance also provides support for companies in the blockchain space. "These blockchain companies are looking for legal advice, investigation and protection in order to be an ongoing source of

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with Ingegnere or the Ingegnere Foundation, one of these entities, whose public registration which is based in Cook County, was led by founder established a Ingegnere Foundation of his own. The foundation, which only sought to file an application for the mark before the USPTO in regard area, is now having problems enforcing its rights against these other organizations.

On top of these is the possibility that Ingegnere may be regarded as a common term, like *Alfa Romeo*. If this happens, Ingegnere will not qualify for trademark protection.

"Although this string of litigation is just the beginning, there is no doubt that the amount of crypto-related trademark litigation is going to increase and will continue to grow in the years ahead."

Trade secret litigation involving software is also increasing according to *Statista*.

"As companies become more visible over the past decade, we've seen an exponential increase in trade secret litigation involving software," he said. "As with all software, crypto algorithms can be executed or copied by your ex-employee's new employer, and we should expect more and more trade secret cases involving crypto technologies."

Overall, a lot of things are happening in the world of cryptocurrencies, blockchain and NFTs. These developments are sure to shake the innovation and IP system to some extent over time, even to ways we cannot anticipate. In addition, the path is not clear.

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# AS FINTECH GROWS IN ASIA, ARE COMPANIES READY FOR ITS IP CHALLENGES?

Fintech has exploded on the world financial scene, pushed to the forefront by the lockdowns of Covid-19. *Espie Angelica A. de Leon* examines the IP challenges facing these companies in Asia – and shares how branding can make or break a fintech.

**T**he onset of the global pandemic in 2020 has caused an explosion of fintech products and services. With Covid-19 forcing people across the world to stay home much of the time, fintech has indeed come in handy.

So now, even with the pandemic still upon us, people are conveniently served with a buffet of handy fintech tools, whether e-payments, fund transfers, insurance, lending, personal financial management, alternative assets such as cryptocurrencies and others.

Fintech thrives in Asia, where some of the world's leading fintech companies are found. These include Grab from Singapore, Ant Group from China, GoJek from Indonesia and Paytm from India.

Not only is India the world's third-largest fintech market, it is the fastest growing as well, with Bengaluru and Mumbai as the country's major fintech hubs. Open banking, neobanking, aggregators and digital first insurtechs are among the newest segments for digital payment in India.





"A fintech company must have a pertinent branding strategy in order to position itself as a trusted company which is in compliance with all the relevant regulations. Trademark still holds a very important role in this kind of fintech company branding and positioning."

—EURETINA SERRANO  
Assistant Director, IP

"Some of the organizations that support the development of the startup community in Vietnam have tried their best to increase the awareness of IP protection among new startups, including fintech startups, by connecting fintech startups and IP lawyers with IP firms."

—THOMAS TWITLER  
Senior Managing Director, Trade & IP  
Asia Pacific

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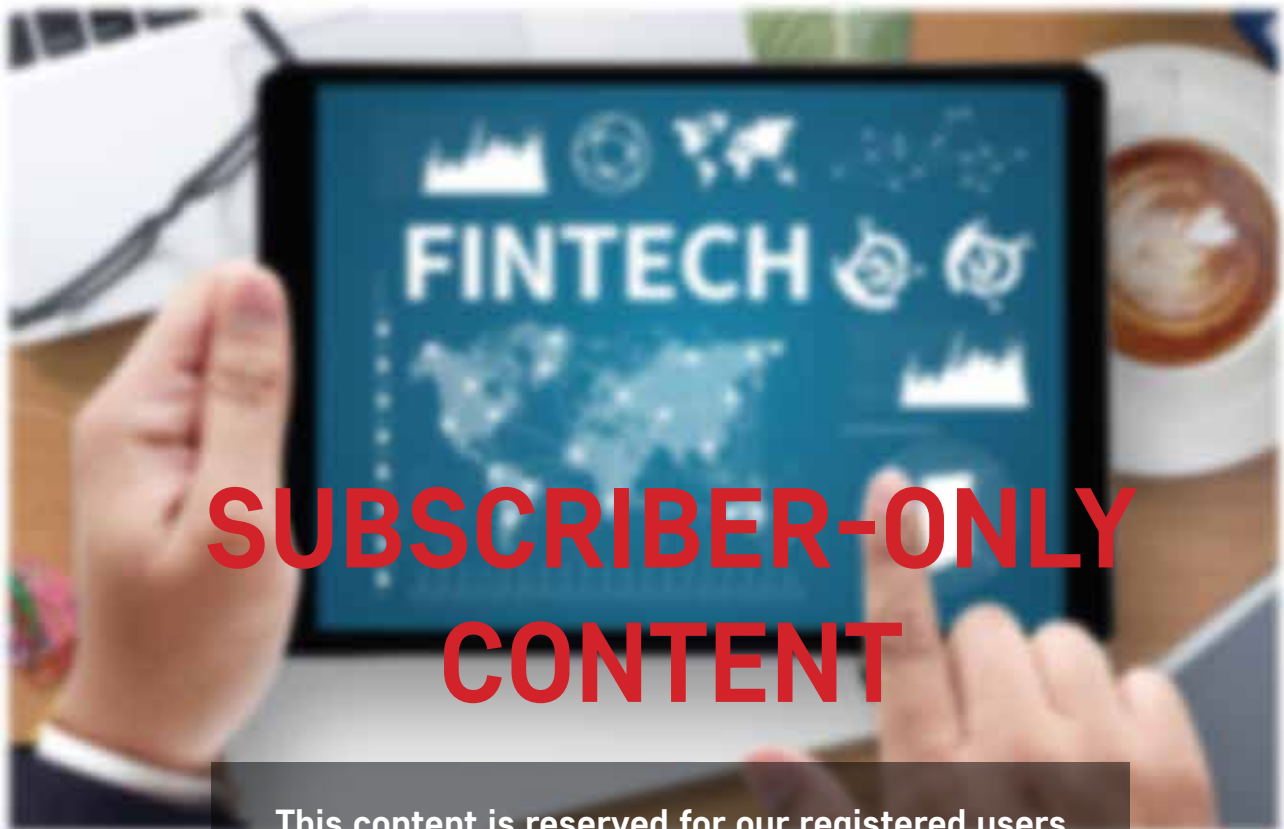
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"A company's trademark is a valuable customer acquisition and retention tool and has an average value for at least 25 percent of each business."

—NITY DEWASNEHA  
Senior Network Analyst

"IP should be top of mind for any venture that involves creativity. This means taking early steps to protect key innovations, brands and other IP assets, and making sure the right agreements are in place with respect to IP ownership and use."

—VICTOR TSE  
Senior Director, Hong Kong



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plunging into the market or making decisions in a progressive manner." The leaders... market to gain an... protection in... to enter the... that IP that... to open for... this, which... agreement with... event the... the idea... between the parties.

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market or making decisions in a progressive manner." The leaders... market to gain an... protection in... to enter the... that IP that... to open for... this, which... agreement with... event the... the idea... between the parties.

"My experience is that these problems are just as imaginative, creative and available that they do not realize they have to protect the creative because there are many entrepreneurs people who will take credit as if it were theirs," said Brundage. "Given that there has been a new normal for conducting commercial transactions and banking processes, perhaps future things should now be strongly considered by the French startups."

Fortunately, the climate of IP awareness is brighter in other jurisdictions, including Indonesia, Korea, the UK, Australia and the US, as well as Thailand. Though it has increased significantly over the past few years in Thailand, there appears to be the level of awareness in the country is still not enough.

Awareness is also high in Hong Kong. "Just like entrepreneurs and innovators in Hong Kong are IP savvy, although with constant developments in IP law in different jurisdictions, entrepreneurs and innovators should always speak to an experienced

Providing a huge boost to such understanding is the National Startup Support Center under the Ministry of Science and Technology of Vietnam. The center has supported various projects and campaigns to develop technology entrepreneurship in Vietnam. Promoting the importance of IP protection among startup players is one of its key objectives.

In Korea is exploding, according to tech market intelligence platform CB Insights, South Korean spend the world's second highest amount of venture capital investments in the first quarter of 2015. This figure does not just compare that for the fourth quarter of 2014, it is more than double the amount for that quarter, definitely a staggering rate. Companies in Asia, North America and Europe accounted for more than 80 percent of this amount.

These developments appear well for the future. But, South players will need to whether future for successful if they begin learning about IP and determine the best protection strategy for their brand and innovations. 📌

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## THE NEED FOR IP INSURANCE

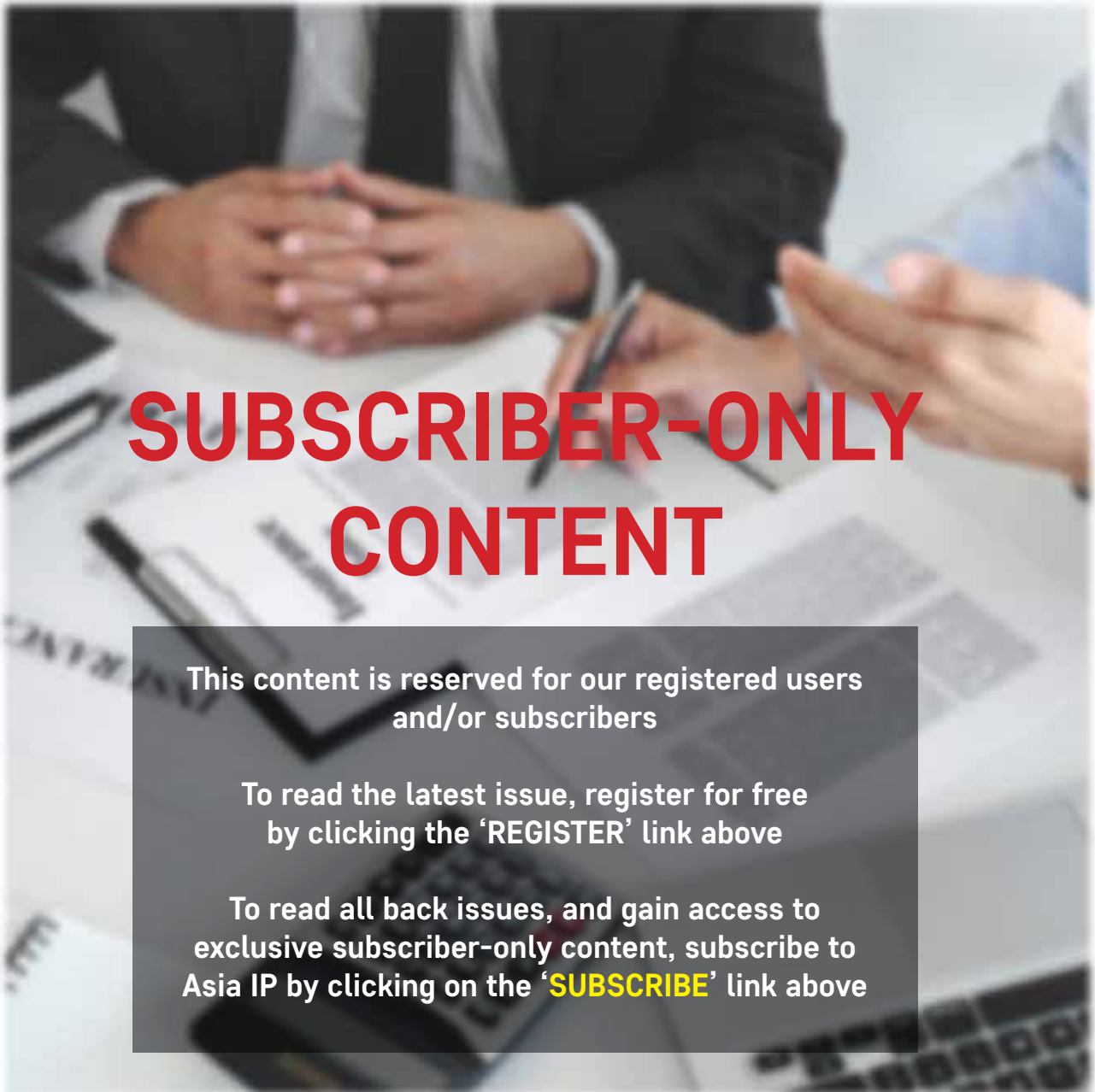
Business practices have changed dramatically since those pre-Covid days of just a few years ago. *Evel V. Dyquilangco* asks a lawyer and an insurance expert whether now is the time to protect your intellectual assets with IP insurance.

**W**hile intellectual properties such as copyrights and trademarks can be protected even when unregistered, registering these often has its value as well. Now that Covid-19 has changed the way so many things are done in the business world, experts say that there may be a higher risk of IP misuse or infringement occurring, considering the drastic change in working conditions.

According to Tom Coughlan, a partner at Thomson Reuters Intellectual IP Insurance is an important tool for companies, individuals and other entities who regularly deal with intellectual property.

Just as tangible property is insured, intangible property should also be insured where it is of value, where the cost of protection is readily replicable or is disruptive to an existing industry. In Australia, IP





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and uncertainty when it comes to an IP legal dispute, the insurer will provide an IP insurance policy to meet costs which would otherwise have been unaffordable, and will bring access to expertise in an IP legal dispute in the form of lawyer recommendations as well as data.

The demand for IP insurance has been increasing as businesses become more aware of the threat not only to their own IP but also the potential that they may face a claim of infringement by another company. He says that there is an abundance of IP globally and it is impossible, despite undertaking searches, to guarantee that your product or brand is not infringing on a third party's IP. This is further complicated by the patent landscape as patents are not published immediately. It is important to highlight that the company itself doesn't need to have IP if it's the other party's IP that is the key point of the claim.

She adds: "Companies having their offices and working from home more has heightened the importance of the intangible assets within their businesses and the need to protect them. Another key benefit to IP insurance is the protection it can provide against alternative expenses that arise in obligations under contracts. Most businesses do not produce final products these days; they are, instead, developing solutions and products that form part of a larger end product, and through this chain contractual expenses arise."

Finally, she notes, there is a further often-overlooked benefit of IP insurance. In addition to a business engineering its IP, having it can help to secure funding from would-be investors. 📌

## IP EXPERTS 2021

## Japan

Japan has long been a favourite jurisdiction for overseas companies to file patent applications. That trend continues, according to a recent report released in late 2021 by the Japan Patent Office, despite a continuing decline in the total number of patent applications there. The JPO received a total of 288,472 patent applications in 2020, representing a decrease of 6.3 percent over 2019, a larger decrease compared to the 1.78 percent decrease in 2019 over 2018 numbers.

That said, the number of international patent applications filed in Japan grew by 1 percent in 2020, which mimics trends reported by the JPO over the past five years.

Applicants based in Japan continued to account for the vast majority (227,348) of patent applications in Japan, followed by those in the United States (22,451), China (8,406), South Korea (5,881), Germany (5,540), Switzerland (2,602), France (2,375), the United Kingdom (1,946), the Netherlands (1,861) and Taiwan (1,442).

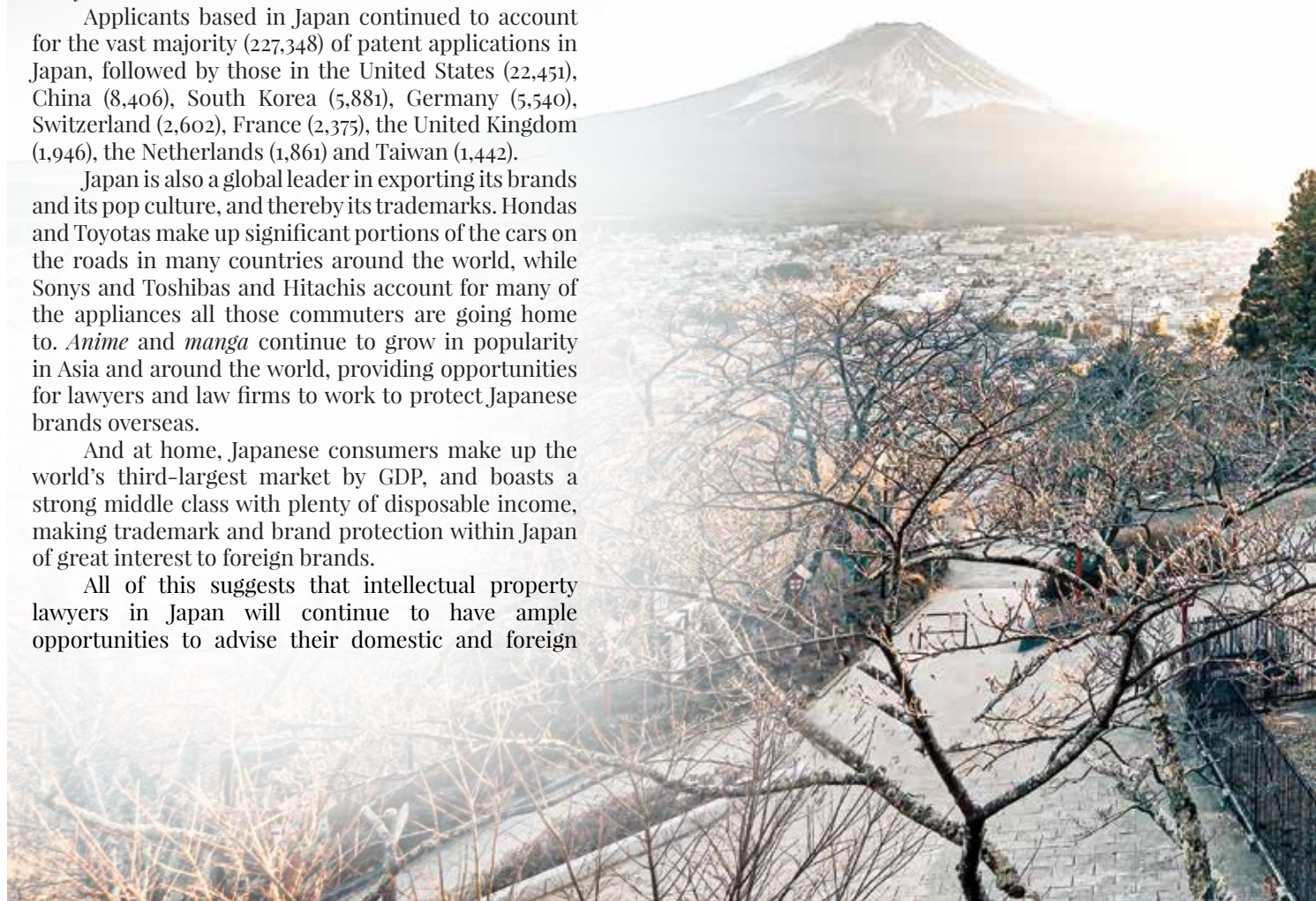
Japan is also a global leader in exporting its brands and its pop culture, and thereby its trademarks. Hondas and Toyotas make up significant portions of the cars on the roads in many countries around the world, while Sonys and Toshibas and Hitachis account for many of the appliances all those commuters are going home to. *Anime* and *manga* continue to grow in popularity in Asia and around the world, providing opportunities for lawyers and law firms to work to protect Japanese brands overseas.

And at home, Japanese consumers make up the world's third-largest market by GDP, and boasts a strong middle class with plenty of disposable income, making trademark and brand protection within Japan of great interest to foreign brands.

All of this suggests that intellectual property lawyers in Japan will continue to have ample opportunities to advise their domestic and foreign

clients alike on patent, trademark and other forms of IP rights protection.

With this continuing interest in intellectual property protection in Japan, we turned to IP professionals in the region in order to understand better what clients need today. *Asia IP* asked a large number of professionals – mostly in-house counsel and corporate legal managers – what they were looking for from their legal service providers. From their answers, we have compiled our list of 50 Japan IP Experts, those lawyers who understand just what their clients need and are able to provide them with the best practical advice.



Today's clients are looking for more than just a degree from a top-notch university and a couple of decades of practice. In order to be an outstanding provider of intellectual property advice, a lawyer must also be capable of understanding how intellectual property impacts the rest of his client's business, and be able to provide practical, real-world, business-savvy advice. She must be able to provide sound advice on the current law, but also needs to be able to understand coming trends which are likely to impact her client's business.


Unlike days past when she might have played just a bit role, today's IP Expert is every bit a full-fledged team member.

Japan's largest IP firms and practices are well-represented on our list, with Nakamura & Partners placing five lawyers in our Top 50 (Kei Iida, Yoshio Kumakura, Shinichiro Tanaka, Koichi Tsujii and Kazuhiko Yoshida), and TMI Associates placing three (Yoshiyuki Inaba, Mitsuko Miyagawa and Shunji Sato).

Seven different firms placed two lawyers each on our list: Abe, Ikubo & Katayama (Eiji Katayama and Hiroshi Kobayashi); Anderson Mori & Tomotsune (Akihito Nakamichi and Masayuki Yamanouchi); Asamura Patent Office (Masahiro Asamura and Yoichi Inoue); Hiroe and Associates (Masanori Hiroe and Takanori Hiroe); Mori Hamada & Matsumoto (Atsushi Okada and Yoshifumi Onodera); Shiga International Patent Office (Shinya Jitsushiro and Yasuhiko Murayama); and Yuasa and Hara (Hiromichi Aoki and Toshiaki Jimura).

Our survey includes only those lawyers working at Japanese law firms.

Most of the lawyers named to our list have multiple practice specialties. Many of them are litigators, while others concentrate on prosecution work or provide strategic advice.

All of them have something in common: they are experts in their fields and, in one way or another, they provide extra value for their clients. They are *Asia IP's* Japan IP Experts. 



# JAPAN IP EXPERTS TOP 50

NAME	FIRM	PATENTS	TRADEMARKS	COPYRIGHT	ENFORCEMENT	LICENSING & FRANCHISING	MEDIA & ENTERTAINMENT	IT & TELECOMS	PHARMA & BIOTECH	IP LITIGATION
Takanori Abe	Abe & Partners	✓	✓	✓					✓	✓
Atsushi Aoki	Seiwa Patent & Law	✓	✓							
Hiromichi Aoki	Yuasa and Hara		✓							
Masahiro Asamura	Asamura Patent Office	✓				✓				✓
Toshiaki Etoh	Tashiro & Etoh Patent Bureau	✓								
Tomoyo Fujimoto	Shiomizaka		✓	✓			✓			
Kensaku Fukui	Kotto Dori Law Office		✓	✓			✓			
Yoshiaki Hasegawa	SOEI Patent & Law Firm	✓								
Masanori Hiroe	Hiroe and Associates	✓	✓	✓						
Takanori Hiroe	Hiroe and Associates	✓	✓	✓		✓				
Kei Iida	Nakamura & Partners		✓	✓		✓	✓			
Toshiaki Iimura	Yuasa and Hara	✓	✓		✓					✓
Yoshiyuki Inaba	TMI Associates	✓				✓				✓
Yoichi Inoue	Asamura Patent Office	✓								
Shinya Jitsuhiro	Shiga International Patent Office	✓							✓	
Chie Kasahara	Atsumi & Sakai	✓	✓				✓	✓		
Eiji Katayama	Abe, Ikubo & Katayama	✓	✓		✓				✓	
Hirohito Katsunuma	Katsunuma International Patent Office	✓	✓			✓				
Yoshitake Kihara	Fukami Patent Office	✓								
Hiroshi Kobayashi	Abe, Ikubo & Katayama	✓							✓	
Eiichiro Kubota	Kubota	✓	✓		✓					✓
Yoshio Kumakura	Nakamura & Partners	✓	✓						✓	
Masatoshi Kurata	Suzuye & Suzuye	✓						✓		
Seiji Ohno	Ohno & Partners	✓				✓				✓
Atsushi Okada	Mori Hamada & Matsumoto	✓	✓		✓			✓		✓
Yoshifumi Onodera	Mori Hamada & Matsumoto	✓			✓	✓				✓
Katsumasa Osaki	Kawaguti & Partners	✓							✓	✓
Kan Otani	Roppongidori Patent & Trademark Attorney	✓								
Hideo Ozaki	City-Yuwa Partners	✓				✓				✓
Masaki Mikami	Marks IP Firm		✓		✓	✓				
Mitsuko Miyagawa	TMI Associates		✓	✓	✓			✓		✓
Manabu Miyajima	Kyowa Patent and Law Office		✓							✓
Yoshiyuki Miyashita	Nishimura & Asahi	✓					✓	✓		
Hidekazu Miyoshi	Miyoshi & Miyoshi	✓	✓	✓						
Masashi Moriwaki	Moriwaki IP Law Firm	✓				✓		✓		✓
Yasuhiko Murayama	Shiga International Patent Office	✓								
Akihito Nakamachi	Anderson Mori & Tomotsune	✓	✓			✓		✓		
Kenichi Nakayama	Sugimura & Partners	✓	✓	✓						✓
Akihiro Ryuka	Ryuka IP	✓				✓				
Masahiro Samejima	Uchida & Samejima Law Firm	✓				✓		✓		✓
Shunji Sato	TMI Associates		✓	✓	✓					
Takamitsu Shigetomi	Oh-Ebashi LPC & Partners	✓							✓	✓
Masayuki Shobayashi	Shobayashi International Patent & Trademark Office	✓	✓						✓	
Yoshitaka Sonoda	Sonoda & Kobayashi Intellectual Property Law	✓								✓
Shinichiro Tanaka	Nakamura & Partners	✓	✓		✓					✓
Koichi Tsujii	Nakamura & Partners	✓	✓		✓	✓				✓
Hideya Tsuba	Tokyo Kyodo Patent Office		✓							
Kozo Yabe	Midosuji LPC	✓	✓	✓	✓					✓
Masayuki Yamanouchi	Anderson Mori & Tomotsune	✓				✓			✓	
Kazuhiko Yoshida	Nakamura & Partners	✓	✓			✓				✓

Extended biographies of lawyers highlighted above appear on Pages 47-54



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Mr. ABE is an Attorney-at-Law, admitted in both Japan and New York. He is currently a Guest Professor of Osaka University Graduate School of Medicine and formerly a lecturer of The University of Tokyo Graduate School of Medicine and Faculty of Medicine. He is an arbitrator in Japan and sits on various positions in Japanese medical/pharmaceutical societies.

Mr. ABE works in wide areas of international and corporate matters with a focus on intellectual property law and international commerce. The patent litigations that he has participated covers the fields of pharmaceuticals, chemistry, IT and Telecommunications, electronics and machinery, which involve advanced technology such

as biotechnology, semiconductors, etc., and which are cross-border matters. He has extensive experience on representing and advising multinational and domestic clients in pharmaceutical industry and is currently involved in the drastic battle between brands and also the one between brands and generics. He also has experience of IP due diligence in the largest pharmaceutical M&A in Japan between big pharmaceuticals. FTO search is his daily works. He has been advising on FRAND matter. He also has experience in trademark, copyright and unfair competition litigation.

For Mr. ABE's detail information and activities, please visit [www.abe-law.com](http://www.abe-law.com) or email to: [abe@abe-law.com](mailto:abe@abe-law.com)



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Masahiro Asamura is a Senior Managing Partner at Asamura Patent Office, p.c. and Asamura Law Offices successfully leading both firms.

Besides management responsibilities, he is involved in consultations regarding patent, trademark, designs, and copyright related disputes, unfair competition concerns, inter-party trials (invalidation trials and trials for cancellation), warning letter correspondence, negotiations, cross-border injunctions, and litigation. Mr. Asamura has

extensive experience as both patent attorney and attorney-at-law advising Japanese and foreign companies in a wide range of intellectual property matters.

Mr. Asamura also served as a member of the Japan Patent Attorneys Association's Amicus Brief Committee (2011-2013) and as a member of the Association's Intellectual Property Litigation Committee (2013 – 2014) where he was involved in examining court cases and Japanese litigation system.



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**AREAS OF EXPERTISE** Intellectual Property - Trademarks, Designs, Copyright, Unfair Competition, IP Litigation.

**OVERVIEW** Masanori Hiroe has around 20 years of experience handling cases related to trademarks, designs, copyright and unfair competition. He specialises in the field of trademark acquisition and infringement proceedings, but also handles trademark prosecution for companies and businesses in various industries based in Japan and around the world. Mr Hiroe is active as a member of the Trademark Committee and the Copyright Committee of the Japan Patent Attorneys Association (JPAA) and has a track record of participating in public research groups on the trademark and copyright systems. Seeing growth as an integral personal goal, Mr Hiroe attends international conferences such as INTA yearly, in order to understand international trademark protection trends and strengthen his business practices. As an extension of this goal, he is a part-time lecturer at Gifu University, educating students and working adults in IP law, as well as training future IP specialists.

**Education-** Graduated from Ritsumeikan University Faculty of Law, Graduate School of Law

**Positions-** Director, managing partner and patent attorney at Hiroe & Associates, Head of the trademark, design, copyright and unfair competition sections. Part-time lecturer at Gifu University (2016-), Member of the Intellectual Property Support Centre of the JPAA (2012-2016), Member of JPAA Trademark Committee (2016-2018), Member of the JPAA Copyright Committee (2018-2020), Chair of the JPAA Gifu Prefectural Committee (2020-).

**Recent seminars-** IP business symposium in Gifu (2018), Gifu University Research Promotion and Social Cooperation Organisation Intellectual Property Seminar (2016-), Gifu University Common Courses Intellectual Property Law (2016-)

**Memberships-** Asian Patent Attorneys Association, INTA, Japan Intellectual Property Association, Japan Trademark Association, JPAA.



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**AREAS OF EXPERTISE** Intellectual Property -Patents (Chemistry), Trademarks, Copyright, IP Litigation.

**OVERVIEW** Takenori Hiroe is the founding partner of Hiroe & Associates(H&A). After graduating from Gifu University in 1971 he worked for the R&D department of Japan Vilene Co., Ltd. in Tokyo. He obtained his patent attorney's license in 1978 and founded H&A in 1979. In February 2004 Takenori was registered as an Intellectual Property Law Infringement Lawyer. In 2011 he received the Medal of Merit from the emperor of Japan for his longstanding services as a patent attorney. To this date, he has been involved in numerous patent and trademark applications and proceedings, contributing to the protection of IP. 1998 Delivered a lecture regarding Japanese Intellectual Property System at AIPLA conference in Florida. / June 2001 Received the JPO Commissioner Award for outstanding practice of IP rights. / Apr. 2006-2007 Member of Conference on Brinks countermeasures against materials that infringe the Unfair Competition Prevention

Law, Ministry of Economy, Trade and Industry. / Jun. 2011 Recommended by the Commissioner of the Japan Patent Office to be a receiver of a Medal of Merit, and was awarded a Yellow Ribbon Medal by the Emperor of Japan.

**JPAA-** A former member of International Activity Committee, Trademark Committee, Copyright Committee, Unfair Competition Prevention Law Committee and IP Enforcement Facilitation Committee.

**Lectures-** Lectures at seminars sponsored by Japan Intellectual Property Association, Japan Institute of Invention and Innovation, JPO etc. He was also a part-time professor at Gifu University (2005-2017), and still regularly teaches extracurricular IP seminars there.

**Typical work-** IP rights disputes (eg, infringement cases), consultancy on licensing and agreements. He has the insightfulness and ability to instantly understand the content of a case, grasp the points of dispute and come up with the best solution

**Memberships-**AIPPI, INTA, FICPI, JPAA, APAA, JIPA



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 MEDIA & ENTERTAINMENT

Mr. Kei IIDA, attorney at law and patent attorney, is a partner in the Legal Section of Nakamura & Partners where he has practiced IP related matters on behalf of international and domestic clients for around 25 years and specialized in IP law, strategy and management including litigation, ADR, negotiation, contract and opinion, technological alliance, fashion, entertainment, sports, media, agribusiness, international transaction, and antitrust. He graduated from the Faculty of Law at The University of Tokyo and obtained LL.M. in IP at the Franklin Pierce Law Center in the USA. He is an active member of several international IP organizations such as APAA, AIPPI and LES, and several IP

academic societies in Japan such as Japan Association of Industrial Property Law. He also teaches IP law as adjunct lecturer at the Graduate School of Business Sciences, University of Tsukuba for more than 10 years. Further, he has been a member of several research and study committees for reform of IP system for the Japan Patent Office and the Institute of Intellectual Property. Further, he is appointed as IP Expert Advisor for Japan Customs and Advisory on Unfair Competition Prevention Law for Ministry of Economy, Trade and Industry of Japan. In Chambers Asia Pacific 2017, he is described as “a walking dictionary of IP law.”



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PATENTS

Yoichi Inoue is a Director of Chemical Department and an experienced patent attorney who specializes in biology, agricultural chemicals, medical treatment, and medicine. He focuses his practice on domestic and international patent prosecution and has extensive experience handling dispute-related matters, including litigation.

laboratory. Fluent in English, he has visited numerous patent firms in the US and Europe and represented Asamura Patent Office at various IP summits. He was also involved with the seminar on European patents sponsored by the Research Institute of Economy, Trade and Industry of Japan.

Prior to joining Asamura, Yoichi was involved in the research and development of new pesticides at a biological research



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Yoshio Kumakura (Mr.) is an attorney at law in the Legal Section as well as a patent attorney. His main areas of focus include intellectual property law, antimonopoly law, unfair competition prevention law, litigation, arbitration, dispute resolution, and international transaction law. Upon graduating from The University of Tokyo Faculty of Law, he passed the Japanese Bar Examination, but initially began his career in the financial sector at Sumitomo Bank LTD. After his time there he joined Nakamura & Partners. He later studied at Harvard University receiving his LL.M. through an exchange scholarship program sponsored by

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Masaki Mikami is a seasoned IP attorney with extensive experience in trademark law practice since 2003 to help small and large businesses alike have access to trademark attorney who is committed to providing responsive, affordable legal service to their needs.

Prior to entering the legal profession, he worked in the business world. Masaki has global marketing experience while working with Mitsubishi Electric Corporation for a decade. His extensive experience in that field allows him to understand the business realities facing his clients, helping him to negotiate the most favourable deals possible for his clients, providing meaningful, timely legal advice that is consistent with the client's specific business needs.

Masaki concentrates his practice in the field of trademark law, providing trademark legal services to individuals and businesses. Masaki is a qualified IP attorney in Japan, and is registered to practice as IP litigator since 2004. Since beginning his law practice, Masaki has represented a wide range of clients, ranging from small start-up businesses to large international corporations in over 3,000 trademark matters covering more than 120 countries.

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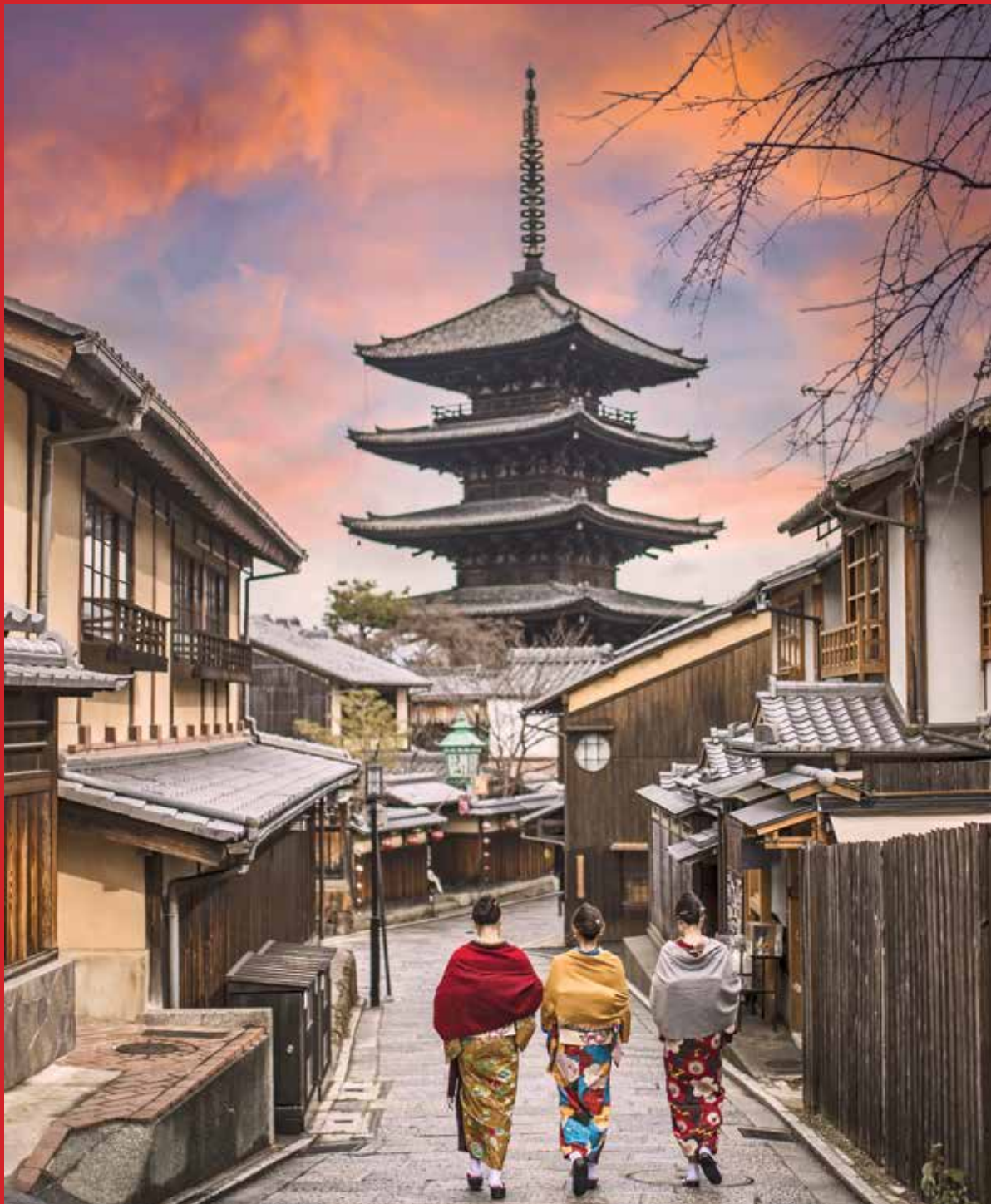
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Japan's IP Experts is based solely on independent editorial research conducted by *Asia IP*. As part of this project, we turned to thousands of in-house counsel in Japan, Asia and around the world, as well as Japan-focused partners at international law firms, and asked them to nominate private-practice lawyers including foreign legal consultants, advisers and counsel.

The final list reflects the nominations received combined with the input of editorial team at *Asia IP*, which has more than 40 years of collective experience in researching and

understanding Japan's legal market.

All private practice intellectual property lawyers working at Japanese law firms were eligible for inclusion in the nominations process; there were no fees or any other requirements for inclusion in the process.

The names of our 50 IP Experts are published here. Each IP Expert was given the opportunity to include their biography and contact details in print and on our website, for which a fee was charged. <sup>AP</sup>



## INDIA

### Domain names qualifying as IP rights like trademarks?

“What’s in a name? That which we call a rose/ By any other name would smell as sweet.”

This Shakespeare line in *Romeo & Juliet* is good so long as it means name is nothing but a name. However, in the corporate world, acquired and fancy names play a niche role to create a market space for a product. Consumer purchasing choices always roam around the well-known trademarks of brand names, which are protected under intellectual property law.

With the upward trend of using the internet for retail purposes, domain names have acquired a significant place in the digital market. In corporate transaction, domain names are being extensively used to establish a unique identity. Some organizations use a domain name that corresponds to their name to help internet users locate them easily. At times, domain names are clubbed with trademark rights for due diligence.

Of late, many business houses are using their trade name with their domain name. For example, Xerox uses the domain name xerox.com, where Xerox is both its brand name and trade name. Some domain names use words which are trademarks and other do not. For example, in the domain name hotels.com, ‘hotel’ is not a trademark. Moreover, ‘hotel’, being a descriptive word, would not qualify as a trademark. Such domain names are categorized as generic domain names, and include examples like books.com, music.com and travel.info.

This dichotomy raises a pertinent issue of whether a domain name can qualify as an intellectual property. The simple reason that domain names would not qualify as intellectual property is that a domain name registration with a registrar would not confer any legal ownership of the domain name; it only confers an exclusive right of use in cyberspace for a particular duration of time.

#### Domain name defined

Simply stated, a domain name is a web identification string that defines a realm of administrative autonomy, authority or control

within the internet. As a computer application, domain names are used in many networking contexts and for application-specific naming and addressing purposes. Basically, a domain name identifies a network domain, or it locates an internet protocol (IP) resource, such as a personal computer used for internet surfing, a server used for hosting a website, the web site itself or any other service available through the internet.

A web address is, technically, a mnemonic, an easy-to-remember replacement for a complex string of numbers that represent the actual IP address (or addresses) where the website in question is to be found. Domain names are often simply referred to as domains and domain name registrants are frequently referred to as domain owners.

#### Emergence of domain names in cyberspace markets

As early as 1985, the computer manufacturer Symbolics registered symbolics.com, which became the first internet domain name. In 1986, companies like Nike, Xerox, HP, IBM, Sun and Intel registered their domain names. Apple joined this race two years later. As of

March 2021, 363.5 million domain name registrations had been made across all top-level domains. Covid-19 lockdowns have brought the digital marketplace to the forefront, with buying behaviour shifting to online. This trend is going to be the future of retail.

### Cyberjacking of trade names and trademarks

Of late, unscrupulous cybersquatters are “cyberjacking” well-known tradenames through registration of domain names. They have no intention of using these domain space for their business. In fact, they cyberjack the trademarks of unwary companies and sell them at hefty prices. The cyber trade wars are now being fought with these cyber squatters over domain name disputes.

At times, cybersquatters use misspelled or distorted catchy words in the domain name to hoodwink consumers to sell low-quality goods or services by diverting traffic to their domain site. For instance, electronicsboutique.com was cybersquatter by John Zuccarini, who owned two confusingly similar domain names in electronicboutique.com and electronicboutique.com. In this case, the U.S. District Court for the Eastern District of Pennsylvania lifted the veil of Zuccarini’s attempted misspellings and held that Zuccarini had intended, in bad faith, to profit from the domain misspellings and barred him from using the names. The court also ordered payment of statutory damages and attorney fees incurred by Electronics Boutique. Under the Anti-Cybersquatting Consumer Protection Act of 1999, Electronics Boutique’s trademark owner was able get a favourable order from the court.

### The Indian position on domain names

Courts in India and other jurisdictions have often ruled that not every cybersquatting of a trademark is wrong. Courts are grappling to determine whether

the alleged cybersquatter is trying to divert traffic from a trademark owner or has a good faith basis for believing that he has a right to a particular domain name. Adopting trademarks of others as domain names is not always cybersquatting. Moreover, every domain name dispute is not as clear like the Electronics Boutique case.

Courts in India are struggling to resolve cyberjacking cases in the absence of such an anti-cybersquatting consumer protection law. For instance, in *People Interactive v. Vivek Pahwa*, the domain name dispute was between shaadi.com and secondshaadi.com. In this dispute People Interactive (plaintiff) sought to restrain Vivek Pahwa and others (defendants) from using the domain name secondshaadi.com in any manner, including as part of the domain name for their web-based matrimonial services. *Shaadi* is a word which means wedding in India and Pakistan.

The plaintiff also sought to restrain the contesting defendants from passing off their website as that of the plaintiff. The final relief sought was to restrain Defendant No. 5, a webhost and domain name registrar, from hosting the defendants’ website, and to direct it to de-register or terminate the defendants’ domain name registration. In this case a bench of the Bombay High court expressed its difficulty on the domain name shaadi.com in clear terms when it was stated that:

21. ***The real difficulty is that shaadi.com is an address. It is the internet equivalent of a physical or terrestrial address. It directs a user to a particular part of the Web where a domain name registrant stores and displays his information, and offers his services. A physical mailing address can never be a ‘trademark’, properly so-called. “10 Downing Street” or “1600 Pennsylvania Avenue” are not trademarks. A web address is, technically,***

*a mnemonic, an easy-to-recall replacement for a complex string of numbers that represent the actual internet protocol address (or addresses) where the website in question is to be found. [Emphasis added]*

### Domain name distinguished from trademarks

In *People Interactive v. Vivek Pahwa*, the Bombay High Court bench, speaking on domain names’ slightest differentiation, observed that: “But this surely begs the question; if both constituent integers are entirely commonplace, and one must look only to the mark or domain name as a whole, then the slightest differentiation must also surely be sufficient.”

Taking this preposition further, the bench ruled that domain name shaadi.com “being generic, commonly descriptive and an Internet address, the slightest differentiation is enough.”

Giving its ruling in favour of secondshaadi.com and denying an injunction to shaadi.com, the court in clear terms held that:

34. *The plaintiff’s claim fails on all counts. Mr. Khandekar begins, as I have noted, with the statement that shaadi is purely descriptive, an argument that Mr. Dhond later attempted to step back from, contending that the mark is inherently distinctive, i.e., not descriptive. I believe, prima facie, that the plaintiff’s mark is generic and commonly descriptive, and it is an address of an internet destination. There is no question of it ‘now’ referring exclusively to the plaintiff’s website; it never pointed to anything else. But that does not make it a trademark. Being generic, commonly descriptive and an internet address, the slightest differentiation is enough. Absent any proof of passing off or deceit (as in the other two cases), I do not see how the plaintiff is entitled to an*

*injunction. On the question of proof of passing off and deceit, I am bound by the decision of Menon J in Raymond Ltd. [Emphasis added]*

On the argument of the plaintiff relating to acquiring of the secondary meaning, the bench quipped that:

*When Mr. Khandekar says shaadi.com has acquired a 'secondary meaning,' he must say what precisely was the primary meaning now said to be lost. That is not explained. It cannot be explained. The reason is plain and direct. **That primary and only meaning was nothing more than a destination on the internet. It was never first a trademark later used to signpost an internet destination, which is a very different thing and is true of other marks such as, say, kodak.com, nikon.com, polaroid.com or xerox.com. Shaadi.com came into being only as an internet address, and there it remains.***” [Emphasis added]

### Conclusion

In the Indian context, the domain name disputes discussed above, in fact, arose where trademarks are obtained using domain name. In this case, the bench observed that a domain name is the terrestrial address of a business on the internet where it directs a user to a particular part of the web where the particular domain name of the registrant stores and displays all the necessary information, offers and service available on the internet. The bench also observed that a physical mailing address can never be a trademark, properly so-called. 10 Downing Street or 1600 Pennsylvania Avenue are not trademarks.


However, in certain cases where a trademark is adopted as a domain name, it may qualify for full protection as a trademark, but this is true only in cases where it was registered first as a trademark and later used to signpost an



internet destination, like in marks such as kodak.com, nikon.com, polaroid.com or xerox.com.

However, the reverse is not considered a good proposition in domain name disputes, as we have seen in the shaadi.com case. The use of a trademark as a domain name may elevate its status as a pseudo intellectual property right but its lack of ownership status would always keep it outside the realms of being treated as a property right. Every domain name that incorporates a trademark enjoys the same protection as the mark, neither more nor less. Every domain name, no matter how non-distinctive or how descriptive, is not *per se* entitled to trademark-level protection.

However, one thing is very clear: a domain name *ipso facto* will not qualify as an intellectual property right. The cases relating to the domain disputes are resolved through civil law actions like passing off actions or by making a complaint with the Uniform Domain Name Dispute Resolution Policy (UDRP) or the Internet Corporation for Assigned Names and Numbers (ICANN) dispute resolution policy or the WIPO Arbitration and Mediation Centre. Not all alleged cybersquatting cases are so clear, so expert guidance

would be useful to get a favourable ruling from the courts. 

#### ABOUT THE AUTHOR

**D.P.S. Parmar** heads the Patents, Contentious practice group at LexOrbis. After joining the IPAB as Technical Member (Patents) in 2011, he has been instrumental in writing some path breaking and insightful decisions on Indian patent law issues.



D.P.S. Parmar

These include establishing legal positions on excluded subject matter under Section 3(d), 3(i) and 3(k), divisional applications, disclosure requirements under Section 8, working statements and compulsory license, to name a few. Before joining IPAB, Parmar worked with the Indian Patent Office (IPO) for over 27 years and had played a vital role both at the administrative and policy levels. He represented India at various rounds of discussions organized by the World Intellectual Property Organization (WIPO) and attended follow-on programs at the European and Japanese Patent Offices. He was instrumental in the recognition of IPO as the 15th ISA and IPEA under the Patent Cooperation Treaty (PCT). He also served as the head of the Intellectual Property Training Institute (IPTI) in Nagpur, which was responsible for providing training to new examiners at the IPO.

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## INDIA

### Drawing a parallel between aesthetics and functionality for design protection

Like many countries in the world, India has a strong law for protecting aesthetic creations by way of design registration. The design law protects aesthetic creations and not the functionality. There is often a misconception regarding the eligibility of articles or products for design registration that have utility and functionality. However, there is no barrier for registering designs for articles that are aesthetically appealing and at the same time performing a function. It is, therefore, essential to understand the difference in aesthetic and functional aspects of an article or product and their interplay while exploring the possibilities of design protection.

#### Legislative position in India

According to Section 2(a) of the Indian Designs Act, 2000, 'Article' means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately.

According to Section 2(d) of the Designs Act, 'Design' means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; *but does not include any mode or principle of construction or anything which is in substance a mere mechanical device.*

The phrase, 'judged solely by the eye' is a characteristic feature of design registrations. The phrase essentially means that the design should be aesthetically appealing

– a test for registration in every application for registration.

#### Legislative position in other jurisdictions

The United States design law provides that an article dictated primarily by functionality with no ornamental value is not a proper statutory subject matter for design registration. Also, a design with no unique or distinctive shape or appearance and dictated solely by the functionality is not proper subject matter for design registration.

In Europe, community design cannot subsist in features of appearance of a product which are solely dictated by its technical function.

In Australia, a design can be registrable if the article includes shape and/or configuration features yet serve a functional purpose.

In Russia, 'industrial design patent' is the term used to denote protection of the visual appearance of industrial or handicraft articles. Further, Russian law rules out eligibility for design protection specially in a case if all features visual, are defined exclusively by the technical function of the article.

It is evident from the above that in most major jurisdictions, it is the product's overall appearance that is registerable as a design and not the functionality behind it. Nonetheless, the article including shape and/or configuration features yet serving a functional purpose is registerable. However, in view of the legal jargon, applicants are often confused about this.

#### Interpretation

It is evident from the definitions above that any article or product with features 1) such as Shape, Configuration, Ornamentation and Pattern [SCOP]; 2) in two-dimensional or three-dimensional form; and 3) that enhance the overall appearance of the article, is an eligible subject matter for design protection. The definitions

do not stipulate any eligibility test of technical functions of such features (SCOP). The test for evaluation of eligibility for design registration is judgement solely by eye, or the "eye test". In other words, whether or not the features embedded in the article or product are distinguishable from existing or competing products, is a matter of external appearance.

#### Purpose of design registration

The purpose of design registration is to protect the aesthetic appearance of an article or product and not its function. Therefore, to assess whether a design can be registered, one must look at the aesthetics of the article and not the functionality of the article.

For example, if the article's shape, surface pattern, and configuration is dictated solely by the function it must perform, then the article cannot be registered as a design. *However, if the article is designed to perform a particular function but also includes aesthetic appeal, it would still be a subject matter for the design registration.* In other words, if the design of the article is not essential to perform the intended function, then such design can be protected under the Designs Act.

For example, a key with novelty only in the shape and configuration of the grooves at the portion intended to engage with levers inside the lock associated with it, cannot be registered as a design.



Novelty in Grooves

Novelty in Head

However, if the same key includes any other aesthetic features, for instance, the unique design of the holding portion or head, then such features of the key can still be protected under the Designs Act.

### The perspective of the Indian Designs Office

The Indian Designs Office generally examines whether the article falls within the definition of Section 2(d) or not. In addition, it also questions if the article meets the requirements of novelty or originality. Therefore, applicants are expected to pinpoint the novel feature(s) of the articles (in terms of shape, configuration, ornamental, and surface pattern, either individually or in combination) in the design representations, if there are close prior arts cited in the examination report. In addition, appropriate amendments are also required to be done in novelty statements and disclaimer statements. Of course, pinpointing a specific novel feature in the design representations limits the protection of a particular design to that feature of the article. Taking the same example of the key as illustrated above, if the applicant pinpoints the novel aesthetic features, i.e., the holding portion or the head of the key, only such features will be protected by the design registration. However, this would help protect the designer's creativity to improve the aesthetics of the key, even though the primary intended function is merely to open the lock.

### The perspective of Indian Courts

The Indian Courts have evaluated the interplay of aesthetics and functionality in a few cases. For example, in *Escorts Construction Equipment Ltd. v. Action Construction Equipment Pvt. Ltd.*, it was held that the shape of parts of a crane is dictated by a function. The particular shape was defined to interrelate with other parts mechanically. Therefore, they only had to pass the test of performing their function and not necessarily be appealing to the eye. Therefore,



it did not satisfy an essential requirement for the registration of designs and was held incapable of being registered.

In *Smit N Parmar v. Paresh D Patel & Vardayani Power Pvt Ltd*, the Gujarat High Court dealt with the issue of alteration of ducted air conditioners. In the altered device under question, the design was such that only the air blower was visible, while the pipes and wires remained hidden. The court held that when there is an alteration to a mechanical device that appeals to the eye, it does not automatically preclude the design from registration.

### The attorney's paradox

Considering the criticality of non-functionality as an element, it is very difficult to always establish whether the design is a default cause for the product to function or is entirely aesthetic and function independent. The three major challenges are:

- 1) To undoubtedly determine that the design and aesthetics are purely functional,
- 2) The tendency of a unique design to have an overlap between function and aesthetics, and
- 3) Functionality being a subjective abstract.

### Closing statement

Not all articles are designed with an aim to have aesthetic appeal. However, articles that are designed to perform an intended function may also have aesthetic appeal which deserves IP protection. Creative aesthetic features of such articles if not protected, are open for piracy or copying. Under the

Designs Act, there is no barrier for registering a design for an article performing the intended function but also having aesthetic value. So, go ahead and protect your articles under the Designs Act even if they were intended only to perform a function. <sup>AIIP</sup>

### In a nutshell

Underlying Factors – Product	Scope of Design Registration
Entirely function-oriented	No
Entirely aesthetics-oriented	Yes
Both function and aesthetics	Yes

### ABOUT THE AUTHOR

**Gopinath A S** is a partner at K&S Partners in Bengaluru, where he handles patent drafting, filing and prosecution in the areas of mechanical, automotive, robotics, metallurgy, energy engineering, and 3D printing. He also handles filing, prosecution, and contentious matters relating to industrial designs. He has experience in handling patent matters in the areas of mechanical engineering and automotive, including electrical vehicles (EV), battery technology, charging technologies, advanced driver assistance system (ADAS), vehicle suspension and braking systems, safety devices for automobiles, engine air filters, and membranes. He also provides opinions on patentability, freedom-to-operate, due diligence and infringement analysis, and manages patents and design portfolios for Indian and foreign clients. He regularly appears before the Indian Patent Office in connection with prosecution and oppositions of patent applications.



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It would be easier to ascertain exact competence of a firm by, e.g. 1) sending it a pending or granted patent for its comments about how it can improve the claims, 2) sending it a pending patent specification without the claims for it to draft the claims for the client's comparison with the original claims, or 3) sending to it and the firm the client is currently using at the same time an initial disclosure so that the client can compare and find out which firm can provide the better claims. This firm welcomes such challenges.



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