

# **Policy Environment for IPR**

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13 July 2010  
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## **Outline**

- What is Intellectual Property/IPR?
- Innovation and IP
- International dimension of IP
- National laws and policies
- Recent developments

## **What is Intellectual Property?**

- Intangible assets from creative work of an individual or institution
- Product of mind or intellect

## **What is IPR?**

- Copyrights and related rights
- Trademarks and service marks
- Industrial designs
- Patents
- Layout designs of integrated circuits
- Protection of undisclosed information
- Geographical indication
- Traditional knowledge (under negotiation - “international legal instrument”)

## What is IPR?

- As defined in the Plant Variety Protection Act
  - Plant breeders rights



Source: [flowerslovers.blogspot.com/wp-admin/images/Me](https://flowerslovers.blogspot.com/wp-admin/images/Me)

## What is IPR?

- IPR vs public interest
  - complementary than conflicting
  - balancing act
  - IP should be managed well to maximize benefits for society (serve public interest through private rights)

## Outline

- What is Intellectual Property/IPR?
- **Innovation and IP**
- International dimension of IP
- National laws and policies
- Recent developments

## Innovation and IP

IP, if managed judiciously, is crucial to the promotion of innovation

"By conferring enforceable rights on those who produce creative and intellectual output, the various forms of intellectual property provide an economic incentive to engage in innovative activities - innovators are encouraged to invest time and money in developing new products, art and science by the prospect of being able to exercise their exclusive rights to capture the rewards that will potentially flow from their efforts."

C. Fitzgerald and Brian Fitzgerald, "Intellectual Property: In principle, 2004

## **Innovation and IP**

### 2009-2010 Global Competitiveness Report

#### 1. Technological readiness

Singapore - 6<sup>th</sup>  
Malaysia - 37<sup>th</sup>  
Thailand - 63<sup>rd</sup>  
Vietnam - 73<sup>rd</sup>  
**Philippines - 84<sup>th</sup>**  
Indonesia - 88<sup>th</sup>  
Cambodia - 113<sup>th</sup>

## **Innovation and IP**

### 2009-2010 Global Competitiveness Report

#### 2. Innovation

Singapore - 8<sup>th</sup>  
Malaysia - 24<sup>th</sup>  
Indonesia - 39<sup>th</sup>  
Vietnam - 44<sup>th</sup>  
Thailand - 57<sup>th</sup>  
**Philippines - 99<sup>th</sup>**  
Cambodia - 129<sup>th</sup>

# Innovation and IP

## Innovation and patenting activity

Country	Grants to Residents 2005	Grants to Non-Residents 2005	Total Grants	% of Grants to Residents v Total Grants
Japan	111,088	11,856	122,944	90%
U.S.	74,637	69,169	143,806	52%
Taiwan	9,124	11,502	20,626	44%
India	750	1,090	1,840	41%
China	20,705	32,600	53,305	39%
Thailand	62	491	553	11%
Singapore	557	7,120	7,677	7%
Indonesia	235	4,069	4,304	5%
Malaysia	37	2,471	2,508	1%
Philippines	15	1638	1653	0.90%

IP Philippines, Intellectual Property and Innovation: The Present Situation and Prospects for the Future, presented during the National Innovation Summit, November 2007.

## Three Year RP Patent Landscape

<b>2005</b>	
210 local patent applications out of total of 2972 applications	<b>7.1%</b>
15 local patent granted out of a total of 1653 granted	<b>0.9%</b>
<i>On patents granted - No Universities, 1 RDI (IRRI)*</i>	
<b>2006</b>	
223 local patent applications out of total of 3261 applications	<b>6.8%</b>
24 local patent granted out of a total of 1215 granted	<b>2%</b>
<i>On patents granted - No Universities, 1 RDI (PCHRD-DOST)*</i>	

(IP Philippines, 2000-2007)

## Three Year RP Patent Landscape

<b>2007</b>	
Only 225 local patent applications out of total of 3473 applications	<b>6.5%</b>
Only 28 local patent granted out of a total of 1814 granted	<b>1.5%</b>
<i>On patents granted – No Universities, 1 RDI (ITDI-DOST)</i>	

(IP Philippines, 2000-2007)

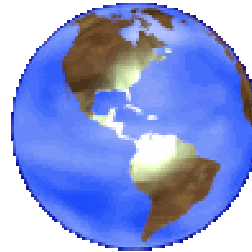
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## International Dimension

### Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)

- Took effect January 1, 1995
- Integral and legal binding part of WTO
- Most comprehensive multilateral agreement on IP
- Makes IPR a fundamental concern of world trading system
- Requires member-countries to harmonize domestic laws with TRIPS standards



## International Dimension

### TRIPS in Relation to Patents

- Requires all member-countries to grant patents for all inventions in all fields of technology
- For plant varieties, TRIPS obliges protection either by patent or by an “effective *sui generis* system or a combination of both
- Patent protection - at least 20 years
- Can exclude diagnostic, therapeutic and surgical methods, plants and animals (other than microorganisms), and biological processes for production of plants or animals (other than microbiological processes)



## **International Dimension**

### **TRIPS in Relation to Copyright**

- Computer programs and databases protected as literary works
- International copyright rules expanded to cover rental rights
- Authors of computer programs and producers of sound recordings and films given the right to prohibit the commercial rental of their works to the public

## **International Dimension**

### **TRIPS in Relation to Trademarks**

- Term of initial registration and renewals no less than seven years, renewable indefinitely
- If a showing of use is required for maintenance of registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use

## **International Dimension**

### **TRIPS in Relation to Industrial Designs**

- Terms of protection - at least 10 years
- Owners of protected designs able to prevent the manufacture, sale or importation of articles bearing or embodying a design which is a copy of the protected design

## **International Dimension**

### **Convention on Biological Diversity (CBD)**

- Entered in 1992
- Has nearly universal participation: 192 States (as of Oct 2009)
- Biological resources no longer considered “common heritage of mankind”
- Article 15.1 gave States full sovereign right to exploit their own resources:  
“Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.”

## **International Dimension**

### **Convention on Biological Diversity (CBD)**

#### **Objectives**

1. Conservation of biodiversity
2. Sustainable use of its components and
3. Equitable sharing of benefits arising out of the commercial use of genetic resources

## **International Dimension**

### **International Convention for the Protection of New Varieties of Plants 1961 (UPOV), last revised in 1991**

- Provides UPOV technical guidelines or international protocols for establishing Distinctiveness, Uniformity and Stability (DUS) of new varieties (prescribes the registration requirements for various genera and species)
- Requires contracting parties to grant nationals of other countries same rights as their own nationals with respect to plant breeding
- Plant breeders are given exclusive marketing rights for a registered variety for minimum of 20 years

## **International Dimension**

### **Patent Cooperation Treaty (PCT)**

- Came to effect in 1978
- Enables a single patent application to be filed for all designated PCT member countries
- Enables the filing with a single Patent Office("the receiving office") of a single "international application" in one language having effect in each of designated countries
- Only single set of fees is incurred for preparation and filing of the international application, and they are payable in one currency and at one Office, the receiving Office

## **International Dimension**

### **Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the purposes of Patent Protection 1977 (Budapest Treaty)**

- Where an invention involves a microorganism, or the use of a microorganism, such a description is not sufficient for disclosure
- The deposit of a sample of the microorganism is essential
- When protection sought in several countries, one deposit in one international depositary authority suffices

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## National Laws and Policies

### **RA No. 8293**

*“The Intellectual Property Code of the Philippines”  
An Act prescribing the intellectual property code and  
establishing the Intellectual Property Office, providing  
for its powers and functions, and for other purposes*

### **RA No. 9168**

*“The Philippine Plant Variety Protection Act of 2002” An act  
to provide protection to new plant varieties and establishing  
a National Plant Variety Protection Board*

### **RA No. 9147**

*“Wildlife Resources Conservation and Protection Act of  
2001” and Wildlife Policy and Bioprospecting Guidelines*

## National Laws and Policies

- **RA 9150**, “An act providing for the protection of layout-designs of integrated circuits”
- **RA 7459**, 1982 or the Inventors and Invention Incentives Act
- **RA 8439** or the Magna Carta for Scientists, Engineers, Researchers and other S&T Personnel in Government institutionalizes the provision of incentives for S&T personnel

## Administration of IPR

- **IP Philippines** administers policies in the IP Code of the Philippines
- **DA** oversees provisions of the Plant Variety Protection Act
- **DENR** administers Wildlife Act
- **DOST** oversees implementation of the Magna Carta for S&T Workers

## Closer Look at IPR

- Philippine IP system follows “**first to file**” rule
- IP protection life
  - Patent - 20 years from filing date
  - Utility models – 7 years without renewal
  - Industrial design – 5 years, renewable for five years each
  - Trademarks – 10 years, renewable for 10-year periods
  - Copyrights – life of the author and 50 years after his/her death

## Closer Look at IPR

### What can be patented?

- A **technical solution** to a problem in any field of human activity
- **New** (should not form part of *prior art*)
- Involve an **inventive step** (not obvious to the person skilled in the art)
- Must be **industrially applicable** (can be produced and used in any industry)

## Closer Look at IPR

### Who owns IPR in an employer-employee relationship?

- a) Patent, Industrial Design, Utility Model
- *Employer*, if part of employee's regular duties, unless there is an agreement to the contrary
  - *Employee*, if not part of regular duties, even if employee uses the time, facilities and materials of the employer

## Closer Look at IPR

### Who owns IPR in an employer-employee relationship?

- b) Copyright
- *Employer*, if part of employee's regular duties, unless there is an agreement to the contrary
  - *Employee*, if not part of regular duties, but works of government are not copyrightable



## Closer Look at PVP

### Plant Variety Protection (PVP)

- PVP Act grants exclusive rights to the breeder of a new plant variety so that he/she can exploit or commercialize the variety
- Conditions for the granting of breeder's rights

**New-** variety not been sold, offered for sale or otherwise disposed of to others

**Distinct** - clearly distinguishable characteristics from a particular genotype or combination of genotypes

**Uniform** - relevant characteristics are similarly expressed

**Stable** - characteristics remain unchanged after repeated propagation

## Closer Look at PVP

### Plant Variety Protection (PVP)

- Terms of protection – 25 years for vines and trees and 20 years for all other plants from date of filing
- The PVP certificate holders have right to produce and reproduce the plants to offer them for sale and export
- Exemption – acts done for non-commercial purposes, for experiment, for breeding other varieties, and use by small farmers

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## Recent Developments

### **RA 10055 - Philippine Technology Transfer Act of 2009**

March 23, 2010	-	Signed into law
April 23, 2010	-	Publication of RA 10055
May 8, 2010	-	Effectivity of the law
Sept. 8, 2010	-	Issuance of IRR

## Recent Developments

### **RA 10055 Salient Features:**

- Ownership of IP/IPRs derived from research funded by GFA shall in general be assigned to the RDI that implemented the research
- RDI should diligently manage IPR to ensure this is translated into useful products and services for the benefit of Filipinos
- A public RDI may allow its researcher-employee to pursue commercialization through spin-off company
- RDIs are encouraged to establish their own IPR policies and TLO/IP offices

*For more information about the Philippine Technology Transfer Act of 2009 – [www.dost.gov.ph](http://www.dost.gov.ph)*

# Thank You!

*Intellectual Property Management  
in Health and Agricultural  
Innovation: a handbook of best  
practices EXECUTIVE GUIDE*

Ana tole Krattiger  
**with**  
Ri chard T. Mahoney  
Li ta Nelsen  
Jenni fer A. Thoms on  
Alan B. Benn ett  
Kanika ram Satyana  
rayana  
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Ca rlos Fernan dez  
Stan ley P. Kowalski

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Cruz Foundation, and  
*bioDevelopments-International  
Institute.*  
Second edition. 2009.

## **Closer Look at IPR**

### **Still on Patent**

- IP Code allows patent protection for microorganisms and microbiological or non-biological processes
- Living organisms of higher forms are non-patentable
- Compulsory licensing by the State – national emergency, non-commercial use by the patentee, etc.