IP Teaching in Malaysia

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1. Introduction and Background

Legal education is still relatively new in Malaysia; its first law school (the Faculty of Law of the University of Malaya) was established only in 1972. Likewise, the inclusion of Intellectual Property (IP) law in the curriculum is fairly recent. When established, the above Faculty followed the general trend elsewhere and did not include IP law in its curriculum. However, in 1984, it introduced a course on Industrial and Intellectual Property Law at the undergraduate level. In the same year, the School of Administration and Law of the then Institut Teknologi Mara (ITM)[1] also introduced a course on IP law. The National University of Malaysia followed suit in 1989, and in 1992, the International Islamic University also incorporated the subject in its curriculum.

When IP was first included in the curriculum, the subject and its importance was relatively unknown. It was perceived as an odd cousin in the law school curriculum as well as in legal practice, studied, researched on or practised only by a few. However, this began to change from the late 1980s onwards. IP began to gain some prominence, and there was a growing awareness of the importance of IP. This shift could be attributed to a variety of factors, one of which was the global importance of IP, and its linkage with international trade. Another factor was the entry of Malaysia into the international IP community by its accession to the WIPO Convention (1967), the Paris Convention for the Protection of Industrial Property in 1989, the Berne Convention for the Protection of Literary and Artistic Works in 1990, and the TRIPS Agreement in 1995. These initiatives brought about changes to the IP laws of the country. The Malaysian Government's moves to push projects involving information and communication technologies (ICT) and more recently biotechnology, and its commitment to the protection of IP rights for the development of these projects have also raised the level of awareness of the importance of IP. IP was also seen as playing an increasingly significant role in encouraging and sustaining trade and investment as well promoting investor confidence and stimulating innovation and development. All these factors continue to influence the development of IP law and IP teaching in the country.

With the growing importance of IP, its inclusion in the law school curriculum became de rigueur. Non-law faculties or departments, such as engineering, computer science, management, business, media, etc, also started to offer IP law as a subject. For instance, the Multimedia University's Faculty of Management and Faculty of Creative Multimedia offer IP law as an optional subject. At the International Islamic University, the Department of Economics and Management Sciences as well as the Department of Communication incorporate copyright law as part of their syllabus.

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This paper focuses on the Malaysian experience in IP teaching in universities, some of the challenges that IP teachers face and will continue to face in devising a syllabus that is relevant to the environment; and possible avenues for networking and cooperation.

2. IP Teaching in Institutions of Higher Learning

(i) General

There is no central authority as such on how IP teaching should be structured. Each individual institution of higher learning determines its own programme, curriculum, teaching, and conduct of examinations.

In the law faculties of local universities, IP law is taught as a subject at both undergraduate and postgraduate level, and typically includes the traditional subjects such as copyright, trade marks, patents, design and confidential information as well the newer areas of IP. At the undergraduate level, it is offered as an option or elective, usually in the third or final year of study. At the University of Malaya, it was taught, originally, as a one academic year subject, that is, over three terms of 10 weeks each. However, with the introduction of the semester system, the course is now taught over two semesters, of 14 weeks each, typically, by way of lectures (2 hours per week) and tutorials (1 hour per week). The course is also divided into two separate courses, namely, IP I and IP II, with various combinations of subjects, that is, copyright, trade secrets and designs, as one combination, and trade marks, passing off and patents as another. Typically, each component of IP is given separate and individual treatment. The courses teach the substantive aspects of each of these components with some focus on procedural matters, particularly in relation to patents, trade marks and designs.

Students may register for both courses or either one of them. The other three law schools also have a similar structure.[2]

More recently, there have been attempts to teach IP as one cohesive unit in a semester,[3] rather than as separate components of a course. The course structure has undergone several changes. In the beginning, the approach was to provide the students with an introduction to the basic concepts of each component and the remedies that are applicable and common to all components. Of course, given the breadth and extent of the subject matter, such treatment of the subject, would only offer, at best, a very basic and cursory introduction to the substantive aspects of all the various components of the subject. Last year, we decided to deal with the acquisition of intellectual property rights in one semester, and infringement of the various rights in the following semester. While this approach allows for a more in depth study of the subject matter, the course is incomplete unless the student registers for the second course which deals with infringement.

2. For example, the International Islamic University offers a Copyright and Industrial Design unit as well as a Patent and Trade Mark unit. The units operate independently of each other and students may choose to do either one or

The mode of assessment is typically an examination at the end of the course with or without continuous assessment or a term paper.

In the Faculty of Management of the Multimedia University, the IP course is taught over one semester, that is, 14 weeks with 3 hours each. Some aspects of IP law are also taught to media students in the Faculty of Creative Multimedia in the same university. The structures of these courses are dictated very much by the demands of the core course requirements. Hence, there is emphasis on media and multimedia licensing issues in the course taught to the media students, performance rights, etc.

(ii) IP Teaching and Research at Postgraduate Level

IP is also a popular inclusion at the postgraduate level. The first LLM programme to offer this course was the University of Malaya, in the 1991/92 academic session. Later, Copyright Law was introduced as a separate course. Today, postgraduate courses in IP and IP-related subjects are offered in other law schools as well.

Initially, they mirrored the LLB courses. However, we are currently witnessing a noticeable shift in focus in the LLM curriculum. This may be attributed to the rising number of IP academics and law graduates who have pursued IP courses for their undergraduate degrees. As a result, the focus has shifted to more specialised or advanced IP and IP-related courses. For instance, the National University of Malaysia has a postgraduate course which focuses on the impact of TRIPS on Malaysian IP laws. The International Islamic University has also introduced a course dealing with current issues relating to IP law. The course covers, amongst other things, issues involving domain names, performance rights, competition, database, biotechnology patents, e-commerce patents, computer software and traditional knowledge. Besides this, there has been a growing interest in comparative law, with the University Teknologi MARA offering courses on comparative IP law in the areas of copyright, patent, design and trade mark law. It is expected that this trend will continue.

Research postgraduate students have also successfully completed dissertations on topics related to IP law, although currently, the research output is still relatively small.

In 2003, in response to the demand for IP professionals who are proficient in both IP law and scientific or technical subjects, the Faculty of Law of the National University of Malaysia introduced a postgraduate programme in IP for non-law graduates with background in engineering and the sciences.[4]

3. IP Training

IP teaching is restricted very much to institutions of higher learning. The IP courses taught in the various universities, like any other law courses, are meant to train law students. They do not

3. The course entitled 'Introduction to Intellectual Property I' is taught in one semester.
4. This programme was introduced under the Graduate Re-Skilling Scheme under the Economic Planning Unit of

cater for professionals such as lawyers, trade mark agents, patent agents, or design agents, wishing to sit for the relevant professional examinations or researchers wishing to be more involved in the protection of their research findings.

Typically, on-the-job training is provided to familiarise lawyers and registry staff with the laws and practice relating to registration, and enforcement officers, prosecutors and judges with the laws and procedures involved. Conferences, seminars[5] and workshops also offer some form of training, either as introductory courses on IP law or as practical training sessions. These training programmes are offered with the assistance and co-operation of local as well as international institutions or organisations such as WIPO, EPO, JPO, EU, LESM, MINDS, MIPA, etc.

In July 2004, Malaysia became a member of ECAP II –the second phase of the European Commission-ASEAN IP Rights Co-operation Programme.[6] In pursuance of its objectives to foster trade, investment and technology exchanges between European and ASEAN nations, the programme is geared towards strengthening IPRs within the ASEAN region.[7] One way in which it does this is through running numerous training courses by way of seminars, workshops, study tours and offering technical assistance which span the entire spectrum of IPRs.[8]

4. Future Challenges, Directions and Trends

The teaching of and training in IP law started primarily as a response to the growing importance of IP in the economic, business, cultural, industrial and social activities of the country. It is tied up very much with, and influenced by the evolution of IP laws and their practice in the country, as well as with developments on the international arena. As IP rights assume greater significance in the economy of the country, the need to educate practitioners, officials, users, IP teachers and trainers will become even more apparent and important, particularly, in the new environment.

I foresee, therefore, more and greater challenges to the IP law teacher and trainer. What are these challenges and what are the possible trends in the field of IP teaching and training?

First, the emergence of new issues and the expanding scope of IP protection, in areas such as information and communication technologies, biotechnology, and traditional knowledge, there will be greater urgency to continue to make the course relevant to the changing environment and its needs. The latest developments will also demand an expansion of the scope of the course to include not only new and emerging issues, but also subjects that hitherto were not part of the

5. Apparently, the first IP training course in this regard could be traced back to 1980, when the WIPO organised a patent seminar in Kuala Lumpur.

6. ECAP II's other ASEAN partners are Brunei, Cambodia, Indonesia, Laos, Singapore, Philippines, Thailand and Vietnam.

7. With 9 million in Euro funding, the programme is due to run until the end of 2006.

8. Examples include training sessions held for Intellectual Property Corporation of Malaysia (MyIPO) examiners in relation to the examination of biotechnology patents, patent search and examination and well-known marks. ECAP II together with MyIPO and the EU-Malaysia Chamber of Commerce and Industry (EUMCCI), also organised a seminar concerning how IP rights can be used to empower SMEs. Topics such as licensing, franchising and IPR

traditional IP course. The increasing value of IP as intellectual capital and corporate assets in the new business environment, has also given rise to the need to focus on acquisition, management, valuation, maintenance utilisation and licensing of IP rights. Globalisation and the new economy will demand that the IP lawyers are conversant not only with domestic IP laws and practice but also with comparative and international IP laws and conventions, trade-related aspects of IP, licensing practices, competition issues, and other related issues. The challenge is to incorporate these new issues and subjects into what is already a very tight syllabus.

Secondly, there may be a need to rethink the current approach to IP teaching. Currently, because of the constraints of time, the approach in all law schools is restricted to the study of substantive principles of IP law. There are of course attempts to cover current issues but more often than not, these issues are examined solely from the legal perspective. The question is whether it is sufficient to focus on the substantive aspects alone, or whether a more practical, or even holistic, approach should be adopted, with emphasis on topics such as the rationale for IP protection and its relevance to developing economies; the impact of IP rights on the socio-economic development of a country; the question of access and the balancing of the rights of IP holders and consumers/users; trade-related issues; and the relationship between IP and human rights.

It could of course be argued that instructions in the substantive aspects of IP law are essential for a better understanding of the subject matter, and therefore universities should be allowed to continue their academic excursions into IP law as currently structured. However, it could also equally be argued that the inclusion of the socio-economic aspects and implications of IP would allow a better appreciation of the issues that may arise and may assist future policy makers in determining the direction of relevant economic policies or laws. Any changes to the current approach, however, would involve a redesigning of existing IP law courses, which in turn may result in certain topics being sacrificed in the interests of time. It may also involve a re-examination of the rationale, if any, for offering IP law as a subject in the first place, and an assessment of its relevance in the current context. Choices would thus have to be made in this exercise. In the alternative, shorter courses dealing with specific areas and related issues could be offered as one semester papers, whether at the undergraduate or the postgraduate level. IP training programmes may also used to fulfil the need for a more holistic approach to IP legal education.

Thirdly, to cope with the pace of developments, there must be continuous research and publications on national IP laws and emerging new issues. Currently, there are no research centres or institutions specifically undertaking research in IP. Research, if any, is usually conducted by law teachers and graduate students. In this regard, it is heartening to note that in the past 10 years or so, Malaysian IP academics have been fairly active, and thus far, books and articles on the various IP subjects have been published. In 1996, the Faculty of Law of the University of Malaya did establish an IP Centre, to undertake research and publications in IP. For a variety of reasons, the Centre is not operative at the moment. The Multimedia University has a Cyberlaw Centre which was established as a virtual research centre, that is, it has no physical premises or building. IP law being a subject matter very closely intertwined with developments relating to and arising from cyberspace, it is expected that IP issues would fall within the terms of reference of the Cyberlaw Centre.

Undoubtedly, the need for continuous research and publications on IP law will place consider-

the form of the Internet, electronic databases, and CD-ROMs offers an excellent alternative in terms of access to IP material, but commercial databases can be expensive.

5. Opportunities for Networking and Cooperation

Sometime in 1995, WIPO organised a regional seminar on IP teaching in Kuala Lumpur, at which I was one of the speakers. At the seminar, the idea of networking and cooperation amongst the IP law teachers of the ASEAN countries was mooted and enthusiastically discussed. Unfortunately, for whatever reasons, these discussions were not translated into any action. This should not be taken to mean that the idea of cooperation, exchange and networking on an individual and institutional basis, both regionally and internationally, is dead and buried. I believe that this idea can still be resurrected, particularly in this new environment. In this era of the Internet and network communities, where IP issues transcend physical borders and countries are more interdependent than ever before, the need for cooperation, exchange and networking assumes even greater significance in IP teaching and training.

There are a number of ways by which cooperation, exchanges and networking may be effected. It could be on an individual or institutional basis. Currently, there are associations and institutions that foster these kinds of arrangements. For IP law teachers and researchers, the International Association for the Advancement of Teaching and Research in Intellectual Property, (ATRIP), immediately comes to mind. The driving force behind this very conference, it exemplifies one such initiative taken to promote trans-border collaboration between IP law teachers and researchers.

The current ATRIP Conference plays host to numerous presentations and discussions on current IP developments and spans perspectives from a diverse range of nations. This component (Panel on IP Teaching in non-Western Industrial Countries and on Distance Learning), in particular, facilitates the comparison and evaluation of the modes of teaching employed in different countries and explores the potential of distance learning.

Besides ATRIP, the ASEAN-EU University Network Programme (AUNP), launched early in 2000, also played a role in addressing this need. The Programme was a collaborative effort between the ASEAN University Network and the European Commission. It was aimed at promoting cooperation as well as knowledge and information sharing between higher education institutions and encouraged regional integration within ASEAN countries. (It is significant to note that one of its specific aims was to "establish sustainable networks among higher education institutions in ASEAN and the EU for joint research and reform projects".[9]) The AUNP created a forum for the discussion of higher education issues through hosting conferences, workshops and seminars which encouraged discourse and information exchange between European universities, governmental and non-governmental bodies and their ASEAN counterparts. Besides this, it has also undertaken numerous research projects,[10] though none were taken in the area of IP. Hence, while the issues targeted by the AUNP[11] are important and relevant to IP teaching on a more general level, the Programme did not address IP teaching as a specific issue.

9. See <http://www.deltha.cec.eu.int/aunp/NI%20-%20Level%201.htm>.
10. The areas are common applied research, curriculum development and human resources development.
11. For instance, how to promote academic mobility, structure credit transfer systems and develop

ECAP II has also taken an interest in strengthening intra-ASEAN ties. Thus, one of ECAP II's goals is to help develop a common IP curriculum in ASEAN universities, particularly in relation to postgraduate studies. At the recent EU-ASEAN Colloquium on a Common Postgraduate IP Curriculum and Syllabi Template for ASEAN Countries held in 2005 in Singapore, this issue was actively mooted. Scholars from participating countries shared how IP teaching has developed in their respective countries and presented proposals for a common ASEAN IP curriculum template. Additionally, the means of adapting this template to meet the specific needs of each country was discussed.

Consequently, a postgraduate IP curriculum model was proposed. It was proposed that the first semester ground students in the basics of IP and consist of the following subject choices:

–Introduction to law
–Introduction to IP law
–Copyright and related rights
–Patent law
–Plant variety protection
–Trademark law
–Geographical indication
–Industrial designs
–Industrial circuits
–Unfair competition law and trade secrets.

Depending on the nature of these subjects, inclusion of international treaties and recent international developments may be effected to a greater or lesser degree. In semester two, students are able to specialise in more specific aspects of IP. It is proposed that the following subjects be adopted:

–Patent drafting
–IP and computer law
–Pharmaceutical patent
–Traditional knowledge and biodiversity
–IP and conflict of laws
–Enforcement and alternative dispute resolution (ADR) in IP rights
–IP and competition law
–Management of IP rights
–IP in ASEAN.

The benefit of the proposed curriculum is that it brings contemporary IP issues to the fore, and allows for a more-detailed coverage of them, thus making it more relevant to today's environment. Equally, subjects dealing with conflict of laws, ADR, competition law and the management of IP rights provide for a more balanced approach to the study and practice of IP law. Basic

seek to develop their knowledge/skills in specific areas. For a more comprehensive description of the above subjects please refer to Appendix A.[12]

While ATRIP, AUNP and ECAP II present excellent opportunities for IP law teachers and researchers to network, it may still be worthwhile to explore the idea that was mooted eleven years ago, that is, an ASEAN IP law teachers association under which academic exchanges and collaborative research activities can be undertaken. Currently, there is an ASEAN IP Association. While the ASEAN IPA admits academics as members, it is basically an association of practitioners, and therefore may not provide the kind of forum more relevant to the needs of IP teachers and researchers. A regional association for IP teachers and researchers could explore ways by which the needs of an effective and relevant IP legal education may be met. However, before any steps to initiate the formation of such an association are taken, it is vital that the IP teachers and researchers of each individual country get together to work and collaborate amongst themselves, particularly, as I believe their number is not very big at the moment.

In so far as training is concerned, collaborative efforts, whether on a regional or international level, could be made to train IP officers, practitioners and professionals, the judiciary, enforcement officers, teachers and trainers. As noted above, training courses have been run by various Ministries and institutions. Nevertheless, the need for a more structured, comprehensive and long-term training base is still prevalent. Efforts in this regard would go a long way towards ensuring the pooling of scare resource and the sharing of expertise and training methods, all of which would in turn contribute to the development of IP law and practice in the various countries, if not the region itself.

6. Concluding Remarks

Advancements in technology, with the resulting impact to the economic, social, political and cultural activities of a country, have often been followed by developments in IP laws, although not necessarily at the same rate of change. Just as IP laws have to constantly evolve to accommodate new developments and issues, so too must IP teachers and trainers continuously re-evaluate their course contents and approach in order to remain relevant to the environment in which it serves. IP teachers and trainers must also be ready to explore and adopt new technologies which could enhance teaching methods and the dissemination of knowledge. Towards these ends, cooperation and networking amongst IP teachers and trainers must be actively encouraged.

12. To further facilitate this process, postgraduate IP scholarships were offered to delegates from participating nations. Each delegate was sent to a leading IP establishment (namely the Munich Intellectual Property Law Centre and Queen

Appendix A*

Course	Content
Semester 1	
Introduction to law	**1. Nature and source of law** Definition and nature of law Statute law Delegation of legislation Statutory interpretation Case law National legal tradition **2. Constitutional Structure** The Legislative The Executive The Judiciary This course is targeted at non-lawyers and is meant to give them a basic understanding of their country's legal framework.
Introduction to IP law	**1. General background of IP** **2.Types of and distinction among IP** Copyright Patent Trademarks and names Other aspirants **3. IP and pressures for development** **4. Property and monopoly: an economic approach** This course provides a broad overview of IP law and caters to both those who want to specialise in IP and those who only want to glean a general understanding of it.
Copyright and related rights	**1. An overview of copyright and related right law** **2. Subject matter of copyright protection** **3. Related right protection** **4. Duration of protection** **5. Assignment and licensing** **6. Collective management of copyright and related rights** **7. International treaties** **8. Recent developments in copyright law**

*Taken from 'Proposed Post-Graduate IP Law Curriculum Model for the ASEAN Countries'

Patent law	**1. Growth and purpose of patent system** **2. Criteria for patentability** **3. The patent: grant and content** **4. Scope of protection** Exclusive rights Infringement Defenses
Plant variety protection	**1. National protection plant varieties** Principle of protection Terms and conditions of protection Establishment of the rights to new plant variety Assignment of plant breeders' rights Licensing and compulsory licensing **2. International protection of plant varieties** **3. Actual issues of plant variety protection**
Trade mark law	**1. History and evolution** **2. Definition and criteria of protection** **3. Registration procedure** **4. Term of protection and renewal** **5. Exclusive rights and exceptions** **6. Use and other requirements** The course is to be divided into two parts, ie basic concepts and international issues.
Geographical indication (GI)	**1. Historical background of historical indications – appellation of origin** **2. Definition and element** **3. The GI protection system** **4. The right to use GI use** **5. Conflict between trademark and GI** **6. GI for wines and spirits** This course will include provisions of the Madrid Agreement Concerning the Reputation of False Indication of Origin (1891) and the Agreement for the Protection of Appellation of Origin.

Industrial designs	**1. Rational of protection** **2. Definition** **3. Subject matter of protection** **4. Terms and conditions of protection** **5. Rights conferred** **6. Industrial design vis-à-vis copyright** **7. Industrial design vis-à-vis unfair competition** **8. Industrial design vis-à-vis trade marks** Students taking this course are expected to possess basic knowledge on copyright, unfair competition and trade mark law.
Integrated circuits	**1. Background** **2. Rational** **3. Subject matter of protection** **4. Terms and conditions of protection** **5. Exclusive rights** **6. International protection** The Washington Treaty The TRIPS Agreement Students taking this course are expected to possess basic knowledge on patent law.
Unfair competition law and trade secrets	**1. Concept of unfair competition** **2. IP and unfair competition** **3. Other fields of unfair competition law** **4. Unfair competition and consumer protection** **5. Trade secret protection** Definition of trade secret Subject matter of protection Confidential obligation Infringement

Semester 2	
Patent drafting	1. Patent law and practice review 2. Specification structure 3. Pre-drafting preparation 4. Approaches to claim drafting 5. Drafting claims without reference to prior art 6. Drafting claims with reference to prior art 7. Drafting a description to support claims 8. Preparing an abstract 9. Patent validity and infringement 10. Patenting worldwide 11. Drafting exercises 12. Review of court decisions 13. Amendments As its name suggests, this course is of a more practical nature and will consist of tutorials and workshops (with group work, discussion and drafting exercise components) in addition to lectures.
IP and computer law	1. Introduction 2. IPRs in domain names 3. IPRs in implemented inventions 4. IPRs in software 5. IPRs in database 6. IPRs in computer-created works (internet)
Pharmaceutical patent	1. Overview of pharmaceutical revolution and patent protection 2. Pharmaceutical invention 3. Pharmaceutical patent: commercial exploitation and market challenge 4. Patent litigation 5. Pharmaceutical patent under international treaties 6. Pharmaceutical patent disputes
Traditional knowledge and biodiversity	1. Introduction 2. Traditional knowledge Possible options for protection Current international framework 3. Biodiversity Human dignity as the standard for international biodiversity management Biodiversity protection methods

IP and conflict of laws	1. Introduction to conflict of laws 2. The basic premise of IP right: territoriality 3. Private international law solution on territoriality Jurisdictional limits De-linking applicable law and adjudicative jurisdiction Extra-territorial relief and recognition 4. International IP harmonisation
Enforcement and alternative dispute resolution (ADR) in IP rights	1. Principles of enforcement of IP rights 2. Enforcement of IP rights under the national law 3. International law on enforcement of IP rights 4. ADR IP dispute settlement mechanism The process and procedure The eligibility to the ADR process ADR Centre Enforcement
IP and competition law	1. The IP-Competition intersection 2. Monopolistic conduct and abuse of dominant position 3. Tying arrangement and block-booking 4. Restricted IP licenses 5. Practice of competent authorities and courts in addressing IP and competition issues
Management of IP rights	1. Economics of IP and its importance to businesses 2. Content and principles 3. Employees and IP ownership and rights 4. Licensing and franchising 5. Brand management 6. Drafting and negotiating IP contracts 7. Valuation and audition 8. Taxation of IP assets 9. Global IP prosecution and enforcement 10. Innovation policy
IP in ASEAN	1. Introduction 2. Effects of the TRIPS Agreement, regional and international interactions 3. Analysing EU experience on IP law harmonisation 4. Drafting the ASEAN framework agreement on IP co-operation 5. The ASEAN Working Group on IP Cooperation (ASEAN WGIP)