

RCEP FORUM
Intellectual Property (IP) Protection in Seed Industry
Overall principle of RCEP and Interpretation of IP

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What is Intellectual Property

- Intellectual Property (IP) is a category of property that includes intangible creations of the human intellect such as inventions; literary and artistic works, designs; and symbols, names and images used in commerce. **IP is protected in law**, the most well-known types are copyright, patents, trademarks and trade secrets.
- This protection enables people to earn recognition or financial benefit from what they have invented or created. By striking the right balance between the interests of innovators and the wider public interests , the IP system aims to foster an environment in which creativity and innovation can flourish
 - - *cf World Intellectual Property Office (WIPO)*

Importance of IP

- 2 key areas

1. Economic and Commercial

- » Support investment in innovation and R&D activities (new phone/ TV etc)
- » Protection of brand and related reputation
- » Protection of creative product and related revenue streams (movies, songs etc)

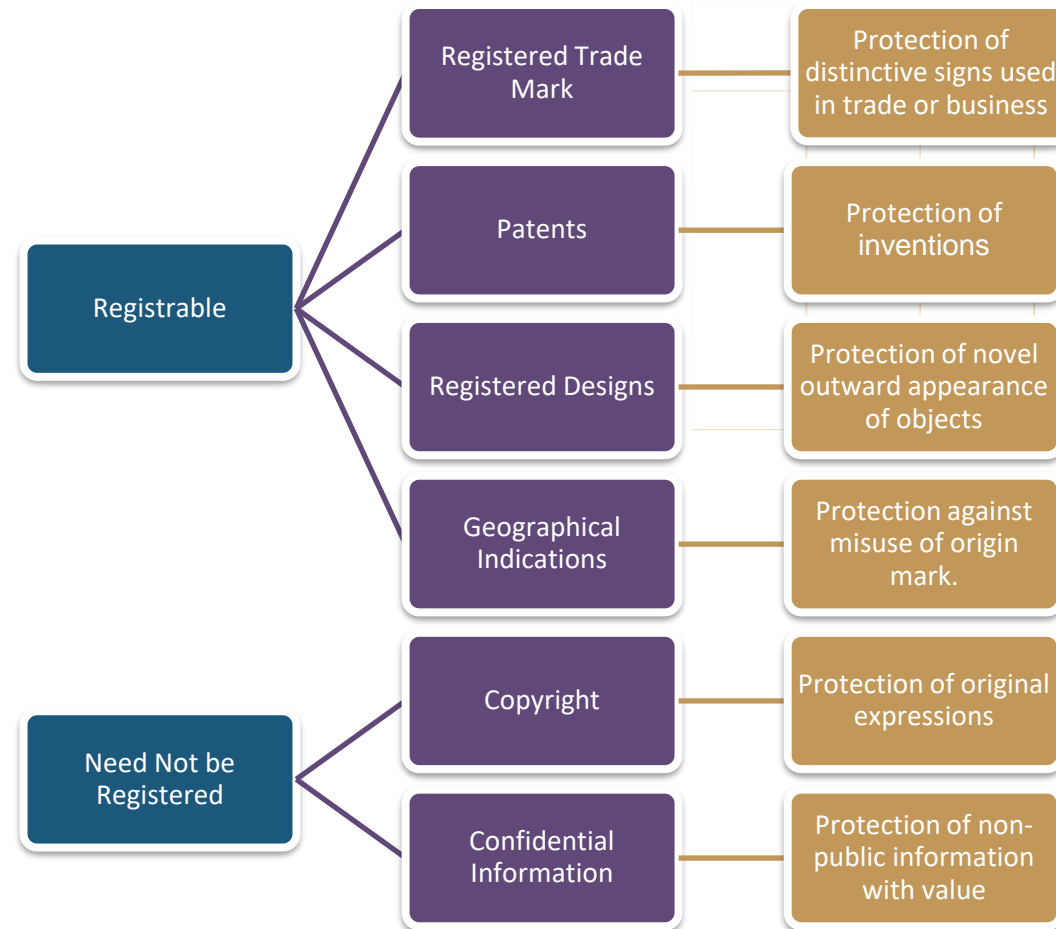
2 Socio-political

- Ensuring balance between rights holders and consumer
- Impact on users of IP arising from increased cost or enforcement

Types of IP

Registered Trade Marks	Protection of distinctive signs used in trade or business
Patents	Protection of inventions
Registered Designs	Protection of novel outward appearances of objects
Geographical indications	Protection of misuse of origin mark
Copyright (no registration required)	Protection of Original expressions
Confidential information (no registration required)	Protection of non-public information with value

Types of IP



Innovation enhanced via IP protection

- **The Innovation Cycle starts with**
- Generation of ideas
- Ideas are expanded and shaped by research and development, results in trade secrets , ideas are patented — IP created in this manner can be protected at this stage loosely referred to as Intangible Assets
- These are the further converted into Products and Services (eg Trademarks, packaging, designs)
- Starts to generate revenue
- Revenue can then be reinvested into new ideas and research eg smartphone

Common IP rules for all

- The WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) is the most comprehensive multilateral agreement on Intellectual Property (IP) . It plays a central role in the **facilitating trade in knowledge and creativity**. The Agreement is a legal recognition of the significance of links between IP and trade and the need for a balanced IP system.
- TRIPS is thus the foundation upon which enhanced IP commitments are developed in FTAs.
- Enhanced commitments are seen to be essential as TRIPS was implemented in 1995. The world today is quite different from 1995 as there have been so many innovations and creations since then eg wide use of the internet, wider recognition of artistry in films, recognition of the role of designs in commercial products etc. To encourage further innovation and creation , FTAs seek to widen the scope of IP protection and related enforcement.

IP Territoriality

- IP Protection is inherently territorial – needs to be present in desired markets – present in terms of ability to protect via legal means (includes registration) that includes enforcement
- *Need to identify what we are seeking to protect and how to do so*
- International instruments facilitate this , such as
- TRIPS
- WIPO treaties
- FTAs

Important Agreements and Treaties

- **TRIPS** = Sets level playing field for all WTO members - Main areas covered
- *Copyright , Trademarks, Geographical indications, Industrial designs, Patents, layout designs of integrated circuits, protection of undisclosed information , enforcement*
- Is this sufficient to meet needs of modern innovations ? Can registration process of some of these IP rights be improved ?
- **WIPO Treaties** can help eg
- Patent Cooperation Treaty ; Madrid Protocol; Hague agreement, WIPO copyright Treaty, WIPO Performances and Phonograms Treaty
- **FTAs** play a role in enhancing the level playing field via adoption of WIPO treaties and agreed commitments in areas not as yet covered by WIPO treaties – harmonization of IP regimes as agreed to by FTA partners

Important Agreements and Treaties

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

WTO members

Main areas covered:

- Copyright
- Trademarks
- Geographical Indications
- Industrial Designs
- Patents
- Layout-Designs (Topographies) of Integrated Circuits
- Protection of Undisclosed Information
- Enforcement



- Patent Cooperation Treaty
- Madrid Protocol
- Hague Agreement
- WIPO Copyright Treaty
- WIPO Performances and Phonograms Treaty

Why IP gaining importance in FTAs

- In 2014 it was estimated that there accrued US\$300 billion in cross-border payments of royalties and licence fees for use of IP – one way of measuring value of IP trade
- Enforcement and protection of IP rights is thus gaining importance as there is \$\$\$ involved
- TRIPs agreement can be politely said to have room for manoeuvre so that governments can adapt domestic IP laws and policies to safeguard important national interest.
- Need to set minimum standards for IP protection
- What is minimum though can differ
- Seeking a more level playing field via bilateral/ regional trade arrangements
- Most major FTAs now have an IP Chapter seeking to achieve the above

IP focus in FTAs

- **Key benefits** of FTA IP chapters is to create business facilitative environment by ensuring TRIPS+ IP protection **in the following areas**
 - Trade Marks
 - Trade Secrets
 - Copyright
 - Patents
 - Enforcement

IP focus in FTAs

- **Common features would be**
- Enhancing the level of protection for patents, trademarks and copyright in terms of expansion of coverage (eg protection of sound and scent marks in trade marks) or expansion of term of IP protection
- Provide clarity on technical details in relation to registration as well as include measures to increase administrative ease that all FTA members have to adhere to – makes it easier for biz to navigate and protect their IP rights
- Identify WIPO treaties that FTA parties agree to be party to – reflects areas of TRIPS+ reflects protection for economic sectors that FTA parties are seeking to grow and develop
- Clear enforcement remedies ranging from civil to criminal as well as border control provisions

What are RCEP IP commitments

- RCEP IP chapter consists of 83 Articles divided into the following sections
- Section A – General Provisions and Basic Principles
- Section B – Copyright and related rights
- Section C – Trademarks
- Section D – Geographical indications
- Section E – Patents
- Section F – Industrial Designs
- Section G – Genetic Resources, Traditional Knowledge and Folklore

RCEP IP Commitments (continued)

- Section H – Unfair competition
- Section I – Country Names
- Section j – Enforcement
 - » Civil Remedies : Border Measures : Criminal Remedies
- Section K – Cooperation and Consultation
- Section L – Transparency
- Section M – Transition and Technical Assistance
- Section N – Procedural Matters

High Level of ambition

- RCEP has very strong IP commitments in recognition of the role that IP plays in the business environment – complemented by strong enforcement provisions – none of the existing ASEAN +1 FTAs have such commitments and it goes beyond ASEAN IP provisions
- TRIPs plus covering enlarged scope for IP protection eg
 - deal with non-traditional trademarks (sound (in both), scent (in CPTPP)) so as to create the space for business to leverage and protect these innovative distinctive business identify (eg Nokia ringtone , Volkswagen advert)
 - Addresses the growing digital environment by providing copyright protection for this arena via agreement to accede to WCT; WPPT
 - deal with border measures that are TRIPS plus as well as strong criminal remedies
 - help biz to save cost by facilitating one-stop IP registration eg both adopt the Madrid Protocol and PCT that result in one-stop filing systems to reduce costs and administrative burdens of protecting their brands, inventions and products overseas - in the FTA partner countries as they would be members of the aforementioned Treaty – which coupled with the stronger enforcement provisions helps biz in their expansion and protection of their creation – intangible assets
 - Provides for electronic registration and improved transparency so as to reduce possibility of IP fraud
 - Strong IP enforcement provisions

RCEP also provides for specific interests of RCEP parties

- GRTK provisions reflects the strong interest of many RCEP parties in this area
- As many RCEP members also have vulnerable farmers resulted in UPOV defensive outcomes
- RCEP has LDC members – so strong focus on technical assistance and transition period

Commitments on multilateral agreements as compared to CPTPP

	RCEP	CPTPP
-agreed to ratify or accede	<ul style="list-style-type: none"> • Paris Convention • Berne Convention • Patent Cooperation Treaty • Madrid Protocol • WIPO Copyright Treaty (WCT) • WIPO Performances and Phonograms Treaty • Marrakesh Treaty to Facilitate Access to Published Persons who are Blind 	<ul style="list-style-type: none"> • Paris Convention • Berne Convention • Patent Cooperation Treaty • Madrid Protocol • WIPO Copyright Treaty (WCT) • WIPO Performances and Phonograms Treaty • Budapest Treaty • Singapore Treaty • UPOV
Shall endeavour	<ul style="list-style-type: none"> • Budapest Treaty 	
Seek cooperation to support accession	<ul style="list-style-type: none"> • UPOV • Singapore Treaty • Hague • Rome 	

For Seeds with no UPOV mandate to take note of protection via

Article 11:36 para 3 : A Party may also exclude from patentability

- (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, each Party shall provide for the **protection of plant varieties either by patents or by an effective *sui generis* system** or by any combination thereof. The Parties shall review this subparagraph upon any amendment to subparagraph 3(b) of Article 27 of the TRIPS Agreement with a view to deciding whether to adopt a similar amendment to this subparagraph.

Article 11.48: Protection of New Varieties of Plants

- Each Party shall provide for the protection of new varieties of plants through an effective *sui generis* plant variety protection system
 - For greater certainty, with respect to the protection of plant varieties, subparagraph 3(b) of Article 11.36 (Patentable Subject Matter) is subject to this Article

Article 11.76: Cooperation and Dialogue

- 8. The Parties may cooperate on the administration of systems for the protection of new varieties of plants, including exceptions to the breeder's rights, in relation to paragraph 3 of Article 11.9 (Multilateral Agreements) or Article 11.48 (Protection of New Varieties of Plants).

THANK YOU