The Other Y2K Problem

Will We Make the Grade on TRIPs 2000?



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In the turbulent economic times of the past year and a half, PBEC has been at the forefront of the fight to restore economic growth in the region. PBEC also continues to work on focusing the region's private sector and governments on maintaining momentum on issues that serve as the foundation for prosperity in the 21st century.

The Pacific Rim economies' future will depend heavily on having a strong, vibrant, and creative technological and industrial base. A key prerequisite to developing and maintaining this critical underpinning of growth is strong protection of intellectual property rights.

As history has shown, intellectual property rights provide powerful incentives for creativity and innovation, encouraging people and companies to research and develop new production and product technologies, market new products and create artistic works. Protection of these rights is not less important to economic and cultural development than protecting property rights in tangible property, such as land and personal possessions.

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Strong intellectual property rights protection is very beneficial to a country's economy. Through the strong protection and enforcement of intellectual property rights, an economy can develop a broad range of important industries that are heavily dependent on investments in research and development. These industries are in some of the global economy's most vibrant and competitive sectors, such as computer hardware and software, pharmaceuticals, high-technology manufacturing, publishing and entertainment.

Indeed, even those industries whose core business does not depend directly or heavily on intellectual property see important benefits from areas such as protection of trade secrets. Even the global information infrastructure and the emerging medium of electronic commerce, which seems to hold so much promise in reviving and driving the global economy in the 21st century, will be heavily dependent on the strong protection of its content and technology through copyrights and patents.

In 1996, as part of its comprehensive policy paper *Implementing Free Trade in the Asia Pacific*, the 20 economies of PBEC recognized the importance of intellectual property rights protection and enforcement. In that paper, PBEC recommended that Pacific economies should work together to ensure full implementation of their obligations under the Trade Related Intellectual Property (TRIPs) Agreement. Furthermore, PBEC committed to work to raise intellectual property protection in the region beyond the TRIPs levels.

The TRIPs agreement, which was negotiated under the auspices of the General Agreement on Tariffs and Trade (GATT) and went into effect under its successor organization, the World Trade Organization, on January 1, 1995, is the first internationally-negotiated agreement that contained minimum standards for both the protection and enforcement of a broad range of intellectual property elements. Representing a major advance in the field of intellectual property rights protection, the agreement covered such critical areas as copyright, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and undisclosed information.

Under TRIPs, developed economies were obligated to conform national legislation to TRIPs standards by January 1, 1996. A subsequent review by the WTO TRIPs Council, and the launch of consultations and dispute settlement cases regarding gaps in national protection, have resulted in significant progress in moving these economies towards the levels of protection and enforcement required by the TRIPs Agreement.

On January 1, 2000, developing economies of the WTO will be required to conform their protection to the obligations contained in the TRIPs Agreement. While there is evidence that a number of developing countries have begun the process of conforming their laws to the TRIPs Agreement, many others may not be able to do so by the deadline. As indicated by the hesitancy of certain key developing economies to work progressively towards implementation of key areas of the agreement, bringing all signatories of the agreement online by 2000 may prove difficult, and has serious implications in the WTO.

Perhaps the greatest threat from delayed implementation of TRIPs will be an inundation of dispute resolution cases in the WTO that could possibly overload the system just as we launch a new round of negotiations in the year 2000. Dispute resolution on cases of direct violations of WTO agreements remains a critical part of the TRIPs agreement and the WTO itself. Some familiar with the situation feel that the potential failure of developing economies to implement the agreement in a timely fashion may very well result not only in a rash of dispute cases, but in an overall questioning of the effectiveness of the WTO in establishing and enforcing international rules.

All the PBEC economies should work closely to ensure that this potential outcome does not actually occur. It is vital that our region lead the way in recognizing the importance of strong intellectual protection for economic development and technology transfer by implementing the TRIPs Agreement in a timely and proper manner.

Rich Donaldson is Senior Vice President and General Patent Counsel for Texas Instruments. Mr. Donaldson serves as Chairman of PBEC's International Working Committee on Technology. PBEC will be holding a major intellectual property conference, 'TRIPs and Beyond,' in conjunction with the PBEC IGM on May 20-21 in Hong Kong to raise awareness of TRIPs implementation obligations and the agreement's impact on regional business. Conference details and registration materials can be found on the official PBEC IGM websiste at www.pbecigm99.org.