



European
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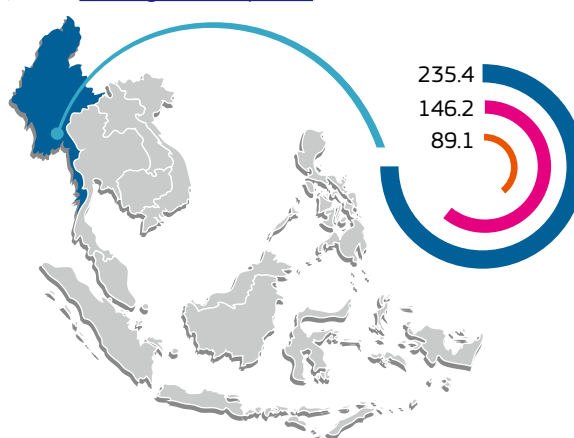
MYANMAR

ASEAN IPR SME Helpdesk IP Country Factsheet



1. THE FACTS: Business in Myanmar for EU Companies

(Source: [EU delegation to Myanmar](#))



SIZE of Market:

- EU exports (goods) to Myanmar in 2010: € 89.1 million
- EU imports (goods) from Myanmar in 2010: € 146.2 million
- Total trade in goods in 2010: € **235.4 million**

Challenges include:

- > Large need for infrastructure and skilled labour;
- > Unclear legal, judicial and bureaucratic systems;
- > Government inefficiencies, corruption and lack of transparency;

Key INDUSTRY SECTORS:

- > **Myanmar imports:** fabrics, petroleum products, crude oil, fertilizer, plastics, machinery, transport equipment, cement and construction materials. Major import partners: China, Thailand, Japan.
- > **Myanmar exports:** gas, wood products, pulses and beans, fish, rice, clothing, jade and gems. Japan held a 45.5% share of Myanmar's total garment exports in 2011. Imports from Myanmar are dominated by the textile industry, accounting for nearly 80% of exports to the EU in 2011, making it the 29th largest trading partner with the EU for clothing.

1 THE FACTS: Business in Myanmar for EU Companies

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2. IPR in Myanmar for SMEs: BACKGROUND

Intellectual Property Rights for SMEs: Why is this RELEVANT to you?

Intellectual Property Rights (IPR), as intangible assets, are a key factor in the [competitiveness of your business](#) in the global economy. IP is a primary method for securing a return on investment in innovation and is particularly relevant to small and medium-sized enterprises (SMEs) when they internationalise their business to areas such as South-East Asia. Although SMEs often have limited time and resources, it is important to be aware of how IP can be valuable to your business. Not only a way to help you [protect your innovations from competitors](#), IP assets can also be an important source of cash-flow for SMEs through licensing deals or selling IP, as well as a significant pull-factor when attracting investors.

Although SMEs often have limited time and resources, it is important to be aware of [how IP can be valuable to your business](#). IPR infringement is one of the most common concerns for businesses when dealing with ASEAN countries, and could lead to loss of business, revenue, reputation and competitive advantage, both in South-East Asia and in core domestic markets, unless you take proactive steps to protect your IP and deter potential infringers.

Myanmar BUSINESS ENVIRONMENT

As a result of restrictions imposed by many foreign governments, foreign investments in Myanmar have primarily been from a limited number of countries focusing on a limited number of sectors, usually labour intensive. This has caused Myanmar's development to lag behind the rest of the other ASEAN countries. Now the scenery is [clearly changing](#) and Myanmar is entering a [new era](#) of modernization.

[Foreign investors](#) that wish to carry out business activities in Myanmar can incorporate a [foreign owned limited liability company](#), register a [branch of a foreign company](#), operate as a [sole proprietor](#) or [establish a partnership](#).

Limited liability companies can either be registered under the Myanmar Foreign Investment Law (MFIL), enabling a wide range of benefits and incentives, or under the Myanmar Companies Act (CA), where these benefits are not available.

The current minimum capital requirement for a MFIL company is currently [USD 500,000](#) for a manufacturing company and [USD 300,000](#) for a service company. Under the CA the minimum capital requirement has been reduced to [USD 150,000](#) for a manufacturing company and [USD 50,000](#) for a service company.

Myanmar currently has a wide range of possibilities for foreign investment, including opening up for [100% foreign ownership](#). Nevertheless, [several restrictions](#) do apply depending on the business activities that are involved. The 2012 version of the MFIL provides a list of 11 economic activities that are to be restricted for foreign investments. The restricted activities can be

summarized as follows:

- Activities that affect culture and ethnic traditions;
- Activities that can be harmful to people's health or harmful to the environment;
- Import of experimental technology, pharmaceuticals and utilities that have not yet been approved abroad;
- Manufacturing and service activities - as further described by Notification;
- Agricultural activities, livestock activities and fishery activities - as further described by Notification; and
- Activities conducted within ten miles of the borders of Myanmar, unless carried out in an designated economic zone. Under the MFIL the Myanmar Investment Commission.

(MIC) and the Government can approve foreign investments in these activities if this is deemed to be in the interest of the state.

How does Myanmar's IP legal framework compare to INTERNATIONAL STANDARDS?

Myanmar is currently not a signatory to the [Paris Convention](#) for the Protection of Industrial Property or any other multilateral trade mark treaty. However, in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), to which it acceded as part of its entry into the Agreement Establishing The World Trade Organisation, Myanmar is required to implement and comply with Articles 1-12 and 19 of the Paris Convention and the terms of TRIPS by no later than [July 1st 2013](#). To date, Myanmar has not complied with its obligations under TRIPS in respect to intellectual property rights. Myanmar is now [drafting IP laws](#) in accordance with the TRIPS Agreement by the [Office of the Attorney-General](#) with the co-operation of the ministries concerned such as the [Ministry of Science and Technology](#) ("MOST") and experts from various sectors and thus, the new trade mark, patent, and copyright laws [may be enacted on July 1st 2013](#). Under the draft trade mark law, a [Trade Mark Office](#) and [specialized Intellectual Property Court](#) could be set up in Myanmar. [None](#) of the current laws referring to intellectual property rights are fully compliant with the TRIPS agreement.



IP TIPS and WATCH-OUTS in Myanmar

Myanmar is the [largest country](#) in South-East-Asia after Indonesia with a population estimated to over [60 million](#). Approximately 85 % of the population is [Buddhist](#). The national language is [Burmese](#), though [English is widely spoken](#) for business in Yangon.

Myanmar currently has a wide range of possibilities for foreign investment, including opening up for 100% foreign ownership.

3. IP Rights in Myanmar: THE BASICS

A. Copyrights

WHAT are Copyrights?

Copyright for written work, film, music or software may be difficult for foreign companies to enforce in Myanmar under the current Myanmar Copyright Act of 1914. Copyrights from other countries are **not recognized** and there are **no procedures for registering** foreign copyrights in Myanmar.

Copyrights in Myanmar: What you need to know

The Myanmar Copyright Act of 1914 provides and outline for copyright of original literature and dramatic work if: (a) in the case of a published work, the work was **first published** within Myanmar; and (b) in the case of an unpublished work, the author was a citizen of Myanmar or "within" Myanmar when the work was created.

However, there may be strategies to protect IP in lieu of traditional copyright rules and companies should determine whether some combination of trademark rules and existing laws such as the **Television and Video Law of 1996** may be used to protect certain rights.

According to the Myanmar Copyright Act 1914, infringement of copyright is actionable in both **criminal** and **civil courts**. The owner of the copyright may be able to appeal to the courts to institute criminal proceedings against the infringer under the Act. Punishment in respect of infringement consists of a fine not exceeding 500 Kyats (approximately €0.43), but this is expected to increase. Making or possessing plates for the purpose of producing counterfeit copies shall be punishable with a fine, which is also up to a maximum of 500 Kyats. For any subsequent offence the penalty is imprisonment for up to one month or a fine to a maximum of 1,000 Kyats, or both.

In Myanmar no specific mechanisms exist for search, seizure and disposal of property relating to copyright. However, the general provisions of the Criminal Procedure Code relating to search, seizure and disposal of property can be applied. Sections 101 – 103 allow for any search to be made in the presence of at least two witnesses, who are respectable inhabitants of the locality and will be required to sign the list to attest to its accuracy. The proprietor of the place searched may be present during the search

How LONG does legal protection last?

The duration of the protection for literature and, dramatic, musical and artistic work under copyright lasts the life of the author and 50 years after his/her death. However, in any case where the

sound can be mechanically reproduced, the original piece of work will only be protected for 50 years after creation.

HOW do I register?

There is no registration procedure.



Copyrights TIPS and WATCH-OUTS in Myanmar

Copyrights from other countries are not recognized and there are no procedures for registering foreign copyrights in Myanmar.

For more detailed information about the copyright protection system in Myanmar, look out for the ASEAN IPR SME Helpdesk's forthcoming Guide to Copyright Protection in the ASEAN Region, to be made available for download from [our website](#) in the coming months.

In Myanmar no specific mechanisms exist for search, seizure and disposal of property relating to copyright.



B. Patents

There is presently **no law** or at least no law in operation on patents and industrial designs. This means that production, commercial use and trade in goods is possible **without permission** of the people/companies who may hold the patents or design rights outside Myanmar.

Consequently, most entrepreneurs have to invest large amounts in their **trade marks** so that they can protect their reputation and goodwill from illegal action related to their business.

Patent and design legislation is not enforced in Myanmar although the Burma Patents and Design Act and the Burma Patents and Designs (Emergency Provisions) Act were enacted as Burma Act No.5 of 1945 and Burma Act No.1 of 1946.

With regard to **pharmaceutical products**, the national Drug Law has been promulgated since October 1992 and notifications were issued in August 1993 pertaining to drug registration, drug manufacturing, importing, selling and distribution, labelling and advertisements. In January 1995, The Food and Drug Administration Department was established under the Department of Health's Ministry of Health. There are two committees, namely the Drug Advisory Committee, to supervise drug registration matters, and the Central Food and Drug Supervisory Committee, to supervise drug manufacturing and importation.

Drafting the new legislation for patents and industrial designs to come into line with the TRIPS Agreement has been carried out by the Attorney General's Office in cooperation with Ministry of Science and Technology. Besides the Patent and Design Law, which is not enforced, Myanmar has a legislative framework for **science and technological development** and **technology transfer** based on industrial development policy.



Patents TIPS and WATCH-OUTS in Myanmar

There is presently no functioning system of patent and design protection in Myanmar. Companies should be aware of this limitation and discuss with counsel what strategies may be available.

For more detailed information about the patent protection system in Myanmar, look out for the ASEAN IPR SME Helpdesk's forthcoming Guide to Patent Protection in the ASEAN Region, to be made available for download from [our website](#) in the coming months.

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C. Trade Marks

WHAT are Trade Marks?

There is still neither particular statute nor law on trade marks nor specific provisions regarding registration of trade marks in Myanmar today. However, the Penal Code defines a trade mark as "A mark used for denoting that goods are the manufactured merchandise of a particular person". Likewise, the Private Industrial Enterprise Law provides that "a business is not allowed to distribute or sell his goods without trademark".

Trade Marks in Myanmar: What you need to know

A company may acquire a right of property in a mark in Myanmar by using it on or in connection with the company's goods or services if it can be shown that the public understands the mark to indicate goods made by a particular manufacturer or sold by a particular company/merchant.

While, there is no trade mark registration legislation in Myanmar, a practice has developed by which the person purporting to be the trade mark owner may make a **Declaration of Ownership** with respect to that trade mark and register that Declaration with the office of the **Registrar of Deeds and Assurances** in Yangon or Mandalay under the Registration Act. Once the Declaration is registered, it is customary and advisable to publish a **Cautionary Notice** in the English language daily newspaper warning people not to infringe that trade mark.

Enforcement can thereafter be pursued (a) against 'passing-off' under Sections 478-480 of the Myanmar Penal Code; and (b) against infringement under Section 54 of Myanmar's Specific Relief Act and under the Myanmar Merchandise Marks Act. The 'law of passing off' essentially prevents other traders from unfairly riding on the reputation and success that you have built for your trade mark. Three factors need to be proved before a claim of passing off can succeed: (i) that you have established a connection to your trade mark through actual use within Myanmar; (ii) that the defendant has made a misrepresentation to the public that his goods or services are in some way associated or connected with you; (iii) as a result, you have suffered damage to your brand's reputation.

How LONG does legal protection last?

"Registrations" are, in practice, valid for **three years** from the date of registration and may be "renewed" by reregistering a Declaration and re-publishing a Cautionary Notice.

HOW do I register?

A **Declaration** in the prescribed form must be completed by the person purporting to be the trade mark owner for each trade mark.

A **description** of the goods or services on or in connection with which the trade mark is used and a copy of the mark must be included in the Declaration.

A **Power of Attorney** must be executed (by the same party who signs the Declaration) appointing local counsel to be the attorney of the trade mark owner for the purposes of registering the Declaration(s) at the Registrar of Deeds and Assurances.

The non compulsory **Cautionary Notice** (which may include details of more than one mark) should be published in the national English language newspaper such as the New Light of Myanmar.

The registration of a Declaration of Ownership of a trade mark by a person, though a relevant factor for the purpose of determining when he had intended to claim the trade mark as his, will not by itself give him a right of property in that trade mark. Thus, as with common law trade marks in other jurisdictions, a Myanmar trade mark needs to have established a reputation or "use" in Myanmar in order to be enforceable; registration of a Declaration of Ownership and publishing a Cautionary Notice do not give the purported owner of a trade mark the necessary "use" in Myanmar or vest rights of that trade mark.

WHO can register?

Both citizens of Myanmar and foreigners.

Which LANGUAGES can I use?

The registration must be filed in Burmese language.

How much does it COST?

Registration fees

- a. Official fee : approximately EUR 0.76
- b. Agent fee : EUR 100 – 400

**Trade Marks TIPS and WATCH-OUTS in Myanmar**

- The registration of the Declaration and publication of the Cautionary Notice only serve to establish prima facie "use" of the trade mark in Myanmar for evidentiary purposes in any future dispute or passing-off action. They do not in and of themselves create any legal or proprietary right to the relevant trade mark
- Trade mark searches/inspections of the official register of Declarations are not currently permitted. However, because the Cautionary Notices are published in the newspaper, private collections of Cautionary Notices can be searched as a guide to whether a Cautionary Notice for a mark has been published.
- It will be sufficient in court to prove imitation if there exists such similarity between the two marks which could in certain circumstances be considered to be conceived to deceive those persons for whom the goods are intended.
- A trade mark or name which is primarily descriptive of an article, of its composition or mode of manufacture, must be open to everyone and cannot be claimed for exclusive use by one trader.
- An owner of a trade mark has no right to prohibit other persons from the use of such mark in connection with goods of a totally different character.

For more detailed information about the trade mark protection system in Myanmar, look out for the ASEAN IPR SME Helpdesk's forthcoming Guide to Trade Mark Protection in the ASEAN Region, to be made available for download from [our website](#) in the coming months.

D. Trade Secrets

There is no law on trade secrets in Myanmar.

A company may acquire a right of property in a mark in Myanmar by using it on or in connection with the company's goods or services if it can be shown that the public understands the mark to indicate goods made by a particular manufacturer or sold by a particular company/merchant.



4. Using CUSTOMS to block counterfeits

Customs in Myanmar: What you need to know

The Sea Customs Act 1878 prohibits **export** or **import** by land or sea of goods with a counterfeit trade mark. Under sections 170 and 171, a Customs officer is authorized to stop and search any person, vessel or vehicle on the grounds of reasonable suspicion.

WHAT can be registered?

There is no Customs recordal system in Myanmar.



Customs TIPS and WATCH-OUTS in Myanmar

- Currently there is no Customs IP recordal system in Myanmar.
- Rights owners can notify customs officers to suspend the customs clearance of specific goods suspected of being counterfeit. Furthermore, customs officers have ex-officio power to confiscate suspected counterfeit goods.
- IP owners should closely work with Customs and try and provide trainings on their goods to help Customs identify counterfeits.

genuine products

- Information Identifying and disclosing to the authorities the main source of counterfeit goods

Punishment ranges from a fine to three years imprisonment. Additionally, the court may order the destruction of the seized goods.

Civil Enforcement

Even though property in a name or mark is not vested in the "registered owner" through registration in Myanmar, the country's general law does provide that no trader has any right to represent its goods as somebody else's.

Passing Off:

An enforcement action, lies where there is a tangible possibility of damages to some business or trading activity. It is not, necessary to prove a fraudulent motive or representation. The "injured party" is entitled to nominal damages if no actual damage is proved.



Enforcement TIPS and WATCH-OUTS in Myanmar

In Myanmar, there is no system for registration of trade marks or for a statutory title to a trade mark. Thus, the rights of the parties setting up rival claims to ownership of a trade mark must be determined in accordance with the principle of common law based on prior use rather than first to file.

For more detailed information about IP enforcement in Myanmar, look out for the ASEAN IPR SME Helpdesk's forthcoming Guide to IP Enforcement in the ASEAN Region, to be made available for download from [our website](#) in the coming months.

5. ENFORCING your IP

Currently, IPRs infringement cases are handled through a rather **complicated judicial** system with not less than 5 levels: the Township, District, State or Regional Courts and the Supreme Court. It explains why disputes are usually **amicably solved** by negotiations or conciliations.

Criminal Enforcement

An **effective strategy** for enforcement of trade marks and protection of trade names is through criminal action under the Myanmar Penal Code, 1860. The benefit of criminal action is that the Merchandise Marks Act's forfeiture provisions, which also apply to offences under the Penal Code, give significant powers to the court to order the forfeiture of infringing goods, whether or not a conviction is actually secured.

Criminal action under the Penal Code is possible against a person using a false trade mark or a counterfeit trade mark, making or possessing any instrument for counterfeiting a trade mark or selling goods marked with counterfeit trademarks according to Sections 482, 483, 485 and 486 of the said Code.

The accused person can be exempted if he/she can prove the following:

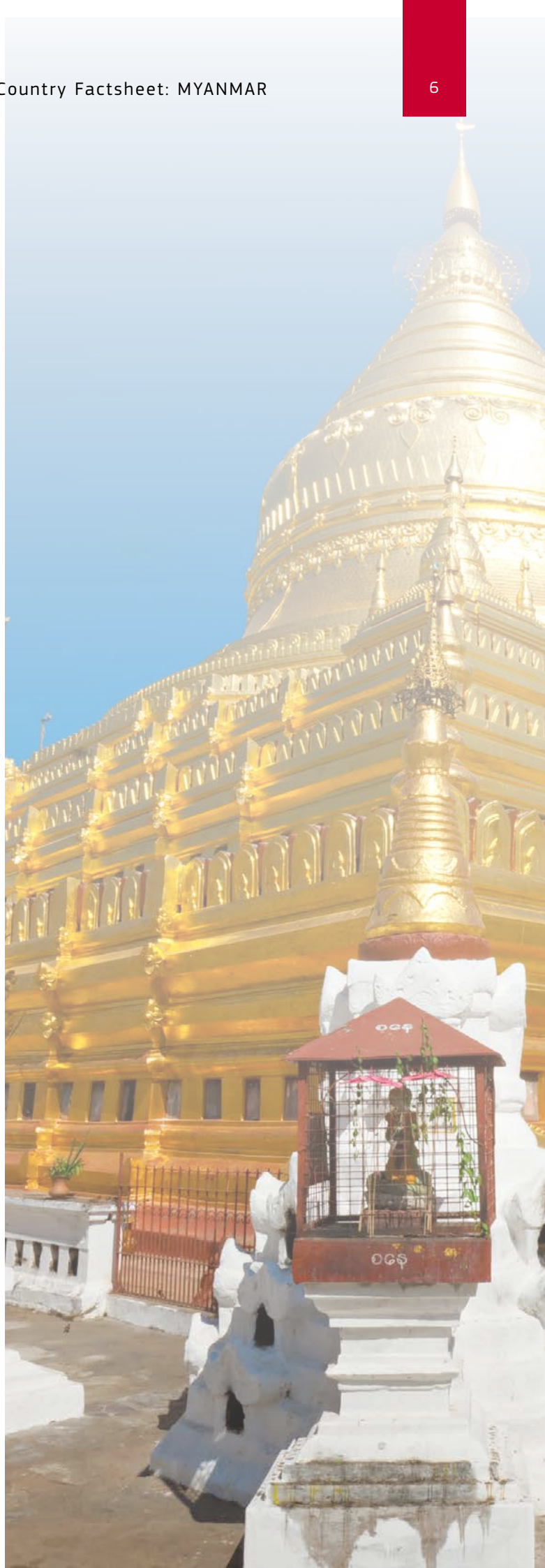
- The counterfeiting was done in innocence due to a lack of knowledge on how to differentiate between counterfeit and

Even though property in a name or mark is not vested in the "registered owner" through registration in Myanmar, the country's general law does provide that no trader has any right to represent its goods as somebody else's.



6. RELATED LINKS and Additional Information

- > Visit the [ASEAN IPR SME Helpdesk website](#) for further relevant information, such as how to deal with business partners in the ASEAN region
- > Visit the Helpdesk blog www.yourIPinsider.eu for related articles on IP in South-East Asia and China
- > [EU Delegation to Myanmar](#)
- > [World Intellectual Property Organisation \(WIPO\)](#)





ASEAN IPR SME HELPDESK



The ASEAN IPR SME Helpdesk provides free, confidential, business-focused advice, relating to ASEAN IPR to European Small and Medium Enterprises (SMEs).

- **Helpdesk Enquiry Service:** Submit further questions to the Helpdesk via phone, email (question@asean-iprhelpdesk.eu) or in person and receive free and confidential first-line advice within seven working days from an ASEAN IP expert.
- **Training:** The Helpdesk arranges training on ASEAN IPR protection and enforcement across Europe and South-East Asia, tailored to the needs of SMEs.
- **Materials:** Helpdesk business-focused guides and training materials on ASEAN IPR issues are all downloadable from the online portal.
- **Online Services:** Our multi-lingual online portal (www.asean-iprhelpdesk.eu) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.

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Guide developed in collaboration with Rouse.

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