

INFOLEX

NEWSALERT

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THE NATIONAL INTELLECTUAL PROPERTY RIGHTS POLICY

1. INTRODUCTION

The National Intellectual Property Rights Policy (the “**Policy**”) has been approved by the Union Cabinet on 13th May 2016.¹

The Policy is a visionary document, aiming to create awareness of intellectual property rights (“IPR”) in general and promote the creation, commercialization, protection and enforcement of IPR in India.

The Policy further aims to promote entrepreneurship and enhance access to healthcare, food security and environment protection amongst the sectors of social, economic and technological importance.

2. OBJECTIVES

The Policy lays down the following 7 (seven) objectives through detailed action plans.

2.1 IPR Awareness

The Policy aims to start a nation-wide program under the slogan ‘Creative India, Innovative India’ to create awareness about IPRs and its benefits, focusing specially on the rural areas where most people are ignorant about their rights and benefits.

Amongst other things, it seeks to create such awareness in not only rural areas, but also specific industries (both public and private).

It also recommends inculcating IPR education in the curriculums of different educational institutions, right from the basic school level at an appropriate stage.

2.2 Generation of IPRs

The Policy recommends conducting a baseline intellectual property (“IP”) audit across sectors to assess the potential of IPR protection and accordingly formulate programmes to develop them further.

It recommends devising mechanisms to ensure that IPRs reach medium and small enterprises, start-ups and grass-root innovators.

¹ See the following link for the full text

http://dipp.gov.in/English/Schemes/Intellectual_Property_Rights/National_IPR_Policy_12.05.2016.pdf

The Policy promotes research and development (“R&D”) through tax benefits available under various laws, the infusion of funds from corporates to public R&D units as a part of Corporate Social Responsibility and aims to expand the ambit of the Traditional Knowledge Digital Library (“the TKDL”) so as to allow public research institutions as well as private parties to use TKDL for further R&D.

2.3 Legal and Legislative Framework

The Policy, while acknowledging that the current legal and legislative framework is compliant with international standards, accepts that there is room for much improvement. The Policy seeks to review and amend, update or improve existing IP laws necessary in an ever-changing technological environment and recommend constructive negotiation of international treaties, in consultation with stakeholders, to improve the IPR regime.

It recommends participating in deliberations to develop legally-binding international instruments to protect Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions.

It also seeks to amend the Indian Cinematography Act, 1952 to provide for penal provisions for illegal duplication of films and to combat piracy in the entertainment sector.

2.4 Administration and Management

The Policy proposes increased interaction between various IP Offices in order to facilitate more effective administration.

In this context, it should be noted that the Department of Industrial Policy and Promotion (the “DIPP”) is allotted the charge of administration of the Copyright Act, 1957 and the Semiconductor Integrated Circuits Layout-Design Act, 2000, which were earlier under the jurisdiction of the Department of Education and the Department of Electronics and Information Technology respectively.

The Policy also makes a recommendation to the IP Offices to continue with their structuring, digitization and modernization processes taking into account the rapid growth and diversity of IP users and services, higher responsibilities and increased workload.

2.5 Commercialization of IPR

The Policy recognizes the need of IPR commercialization by its owners in order to leverage financial value out of the IPR.

It encourages entrepreneurship and makes a recommendation for organizing a public platform to connect creators and innovators with investors, buyers and potential users.

It promotes licensing, technology transfers, patent pooling, IP valuation as well as use of free and open source software for maximum commercialization.

2.6 Enforcement and Adjudication

In addition to educate the general public about the importance of IPR, the Policy acknowledges the need for an efficient adjudication mechanism to prevent misuse or abuse. It sets out the objective of building capacity of enforcement agencies at various levels, including:

- creating IPR Cells in State Police Forces;

- organizing IPR workshops for judges, so that they effectively adjudicate IP disputes;
- affording jurisdiction to the Competition Commission of India in matters relating to licensing practices that may have an adverse effect on competition;
- setting up of specialized commercial courts for adjudicating IP disputes; and
- adopting alternative dispute resolution mechanism for resolving IP disputes.

2.7 Human Capital Development

The Policy aims to develop a pool of IP experts and professionals in policy and law, strategy development, administration and enforcement for realizing the full potential of IP for economic growth.

Some key measures proposed by the Policy are the strengthening of existing and the creation of new IPR cells and technology development and managements units and the formulation of institutional IP policies in educational institutions.

3. OPERATIONAL CHANGES IN THE PRESENT IP STRUCTURE

3.1 Present IP structure

Currently, IPR in India is governed by a range of legislation, including the Patents Act, 1970; the Trade Marks Act 1999; the Designs Act, 2000; the Geographical Indications of Goods (Registration and Protection) Act, 1999; the Copyright Act, 1957; the Protection of Plant Varieties and Farmers' Rights Act, 2001; the Semiconductor Integrated Circuits Layout-Design Act, 2000 and the Biological Diversity Act, 2002.

The practice and procedures under the above statutes are administered by the following government organizations:

- The DIPPI under the Ministry of Commerce and Industry administers the practice and procedures for patents, trademarks, designs and geographical indications;
- The Ministry of Human Resource Development administers copyrights;
- The Department of Information Technology, Ministry of Communications and IT, manages rights and registration relating to semiconductor integrated circuits and layout designs;
- The Ministry of Agriculture manages the protection of new plant varieties and farmers' rights; and
- The Ministry of Environment and Forests is entrusted with regulating the preservation of biological diversity.

3.2 Policy Recommendations

The Policy makes the DIPP a nodal point² to “coordinate, guide and oversee implementation and future development of IPRs in India”.

However, it clarifies that the responsibility for actual implementation of the plans of action remains with the Ministries and Departments concerned with their existing assigned sphere of work.

It aims to re-designate the institution of the Controller General of Patents, Designs and Trademarks (CGPDTM) as the Controller General of Intellectual Property Rights.

The Policy also aims to set up a Cell for IPR Promotion and Management under the aegis of DIPP to “facilitate promotion, creation and commercialization of IP assets”.

The Policy also brings the administration of the Copyright Act, 1957 (earlier under the Department of Higher Education) and the Semiconductor Integrated Circuits Layout Design Act, 2000 (earlier under the Department of Electronics and Information Technology) under the jurisdiction of the DIPP.

IndusLaw View:

The Policy, in spirit, aims to keep up with the changing trends and requirements of contemporary global economy and innovation in technology.

The Policy, as a guideline, promotes creation, awareness and enforcement of IP at various levels; though in our view, the Policy should have focused more on tangible actions to protect IPR through efficient registration mechanisms and a time bound dispute resolution processes, which are essential if India is going to become a magnet for global capital to invest in R&D.

While the Policy is also influenced by the US push for having a better and stronger IP regime in India, it does particularly mention that India has to remain compliant with the Agreement on Trade Related Aspects of Intellectual Property Rights.

The Policy appears to diplomatically balance the interests of all stakeholders, including multi-nationals on one hand and Indian pharmaceutical companies on the other.

However, it contains no detail on concrete strategies to direct and make more efficient the practice and procedures followed by the IP Offices. This appears to be left to the responsible Ministries and respective Departments, who are required to implement the visions listed under the Policy by way of rules, regulations and further amendments to the existing IP laws.

The Policy may also have missed a great opportunity to lay down some policy level changes in the substantive law. For example, certain suggestions made by the IPR Think Tank (initially appointed for formulating the IPR Policy) included introducing a law on utility models for ‘small inventions’, making a law for the protection of trade secrets, creating a new system for protection of traditional knowledge and providing ‘first-time patent’ fee waiver and support to micro, small and medium enterprises. Substantive suggestions like these would have set out certain binding actions for the Ministries and respective Departments to incorporate new rules and regulations for the promotion and protection of IP Rights. Unfortunately, the Policy does not cover these aspects.

² Elaborated in Objective no. 4 of the Policy

The approaches proposed under the Policy may be difficult to implement forthwith at all levels due to the nature of such amendments and also due to the current lack of infrastructure and resources available to each IP Office. Whether the Policy will result in meaningful change on the ground remains to be seen.

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