

**NIPO**

# Enforcing IP Laws

Souvenir 2007



Creating a Framework through Government,  
Industry & Civil Society

Think | Imagine | Dream | Believe | Create | Protect | Monetize

# NIPO

*NIPO is Non-Profit National Association of Creators, Owners and Users of Intellectual Property with a mission to work as a specialized forum for the development, promotion & protection of Intellectual Property*

*NIPO is dedicated to creating an IP culture, provide inputs for harnessing Intellectual Property assets for economic & social development, generate policy initiatives in the area of IP and assist in capacity building by providing education and training on the subject*

## *NIPO's Mandate*

- *catalyze awareness on IP through publications, seminars & educational programs*
- *facilitate improvement of legal institutional and administrative framework for protection of creators & consumers of intellectual property and work for establishment of a national protection system for preventing IPR violations*
- *aid, assist & facilitate IP owners and interact with other IP associations across the world*
- *gather, consolidate & disseminate commercial intelligence, assist in developing markets to promote commercialization and encourage trade in IP by reduction in transaction costs.*

*"Collective concern for development, promotion and protection of intellectual property is the only way to achieve individual excellence."*

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## Message from Kamil Idris Director General World Intellectual Property Organization

Each year on April 26, governments and organizations around the world join WIPO in celebrating World Intellectual Property Day. Our theme this year is *encouraging creativity*.

For many people, the connection between intellectual property and creativity is far from obvious. The word creativity conjures a world of artists and music makers, of poets and problem solvers. Whereas intellectual property all too often summons images of gray-suited lawyers, locked in litigation. But look more closely, and it quickly becomes clear that it is the intellectual property system itself which sustains and nourishes those creators.

Everywhere we look, we see images of intellectual property in action:

- in the color and drama of a box office hit from Bollywood, providing entertainment and employment for countless people;
- in the songs of a rising star from Mali, whose CD sales transport African rhythms to listeners around the world and help him earn a living from his music;
- in the vision of a non-profit non-governmental organization, which develops an engineer's patented device for bringing clean water to isolated villages;
- in the intricate weaving of an Iranian carpet, bearing a registered mark to show its authenticity;
- in the latest trend-setting accessories from a Japanese design team;
- in new medical treatments based on innovative research in China, in Jordan, in Cuba;
- in the best-seller written by a young mother, which brings magic to millions, launches dozens of careers, and earns untold revenues from film and merchandising rights.

Encouraging creativity – rewarding the creative, innovative talents on which our world and our future are built – these are the ends which intellectual property serves. This is what drives WIPO's work. This is what makes World Intellectual Property Day a cause for celebration.

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# From the Desk of President NIPO



We live in a knowledge economy, where ideas are the new currency represented by talented people and the discoveries they make. Today, ideas and knowledge, not the factory buildings, are the real assets of the enterprise. The future will be a world of much greater competition, much faster development of new ideas, and where brainpower and capacity for risk will be the hallmarks of success. Studies in the past decade have estimated that over 50 percent of U.S. exports now depend on some form of intellectual property protection, compared to less than 10 percent 50 years ago. Research and innovations are now seen as the key differentiating factors determining the market value of a product or service.

The economic importance of IP can be gauged by just one recent instance of the new Potter book by J.K. Rowling which sold 8.3 million copies worth approximately \$250 million in its first 24 hours. A well-designed intellectual property regime increases national wealth and benefits consumers by stimulating research and investment into new technologies and innovative products, and by enabling the transfer of technology, including between countries at different stages of economic development. Innovative industries are key drivers of economic growth and key providers of well-paying jobs, thus contributing to the achievement of broad development objectives.

Every person in business locks the door of their premises when they leave at night, but many do not share the same sense of prudence when it comes to protecting the assets that are crucial to the company: its intellectual property. Research in Australia has found that 55 per cent of innovating businesses do not seek protection in the form of patents, trademarks or registered designs. It would be unthinkable for a business not to have a list of its tangible assets such as machinery and buildings, so why would a business consider it acceptable not to have a list of its intangible assets? Increasingly, businesses are carrying out audits of their intellectual property so that they can recognize, protect and exploit. Firms will have to manage and protect their ideas, inventions and processes more pro-actively or risk losing market share.

However, receiving the benefits of intellectual property rights is not automatic. It requires favorable legal, regulatory and policy frameworks, a national IP strategy and most importantly the need for capacity building to sensitize policymakers, law enforcement, businesses, consumers and academics to the importance of IP.

On the enforcement side, the Government has set up an inter-ministerial coordination committee on IPR enforcement issues which comprises the Ministries of Home Affairs, Information & Broadcasting, Information Technology, Central Board of Excise and Customs, National Crime Records Bureau and other related organizations. A separate high powered committee for effective and strategic enforcement of IPR's called the Copyright Enforcement Advisory Council has been set up under the chairmanship of Secretary Higher Education in the Ministry of Human



Resource Development with police chiefs of 21 states as its members besides other stakeholders. Efforts are on to sensitize the law enforcement agencies such as the customs and the police to the gravity of piracy and counterfeiting and equip them with the necessary skills to prevent and investigate IPR crimes. The judiciary too is taking proactive steps to ensure that IPR cases are put on fast track and specialized courts for adjudicating IP cases could come up in time to come.

There's another facet of intellectual property, that is also important in the new economy, and that is that IP itself is an important tradable commodity. Countries like the United States enjoy a huge trade surplus in ideas through licensing; royalty payments and other forms of receipt for letting people in other countries use its innovations. Developing countries generally have a trade deficit in intellectual property. There is a need to assist growth companies in obtaining and exchanging IP rights and explore IP trade practices, which would eventually lead to the development of an Intellectual Property Rights Exchange.

NIPO has been spearheading the IP movement in India and we are happy to note that the efforts finally seem to be paying off and there is a visible increased awareness of both IP enforcement and compliance amongst IP owners and users. On the international side the WIPO Development Agenda recently approved in the Assemblies of Member States is a welcome step to integrate development dimensions into policy making for intellectual property protection. I take this opportunity to convey my best wishes to all those who have been contributing in this exercise and urge them to keep up the good work for ensuring India a place of pride in the knowledge economies as a creative and innovative nation where intellectual property is generated as well as respected.

New Delhi  
November 09, 2007

DR. R.K. DHAWAN

### Quantifying the Value of IP

“The creation and adoption of new ideas – in a word, innovation – is a very powerful factor that helps to determine progress of modern economies.” So reads the first sentence of the *Economic Effects of Intellectual Property-Intensive Manufacturing in the United States*, a new study commissioned by the NGO World Growth and published in August. The study's findings, based on figures from the National Science Foundation, conclude that

- some two-thirds of the value of America's large businesses springs from IP, especially patents and trademarks;
- IP-intensive industries produce 72 percent more value-added per employee than non-IP-intensive industries, create jobs at a rate 140 percent higher and pay much higher wages.

Source : WIPO



कपिल सिब्बल  
KAPIL SIBAL



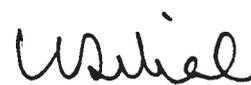
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MINISTER FOR SCIENCE & TECHNOLOGY  
AND EARTH SCIENCES  
GOVERNMENT OF INDIA  
NEW DELHI

## MESSAGE

The world is today witnessing an explosion of new technologies, particularly in information, computation, communication and the life sciences. Technological change denotes changes in the processes of production or introduction of new products or services. Technological progress is not a mechanical procedure of simply finding better products and processes. Instead, rapid innovation requires the fostering of an entrepreneurial spirit.

Technology is a public good. A new technology can be used by many people without being used up. Innovation which is responsible for new technologies is costly to produce, but cheap to reproduce. These special characters of technological change tend to produce severe market failures. Inventors find it difficult to profit from their inventions because of copycats. This would lead to a no-incentive situation for innovation.

Governments have to construct and sustain a credible intellectual property regime to prevent such market failures leading to impoverishment of innovation. I am glad to know that the National Intellectual Property Organisation (NIPO) is bringing out a Souvenir covering the IP related developments in the country during the year. I am sure the souvenir will command wide readership and immense utility.

  
KAPIL SIBAL



# WORLD IP DAY GALLERY



Source : WIPO Website



## NIPO PARTNERS ICC BASCAP INITIATIVE



Counterfeiting and piracy are spiraling out of control. The drain on our businesses and on the global economy is now significant. It has resulted in the widespread loss of lawful employment and a massive reduction of tax revenues. The creative community is robbed of reward for effort and innovation. The incentive to invest is reduced. Consumers are increasingly being harmed by unsafe counterfeit products. All signals also point to linkages with organized crime.

In response to this threat, the International Chamber of Commerce has launched **BASCAP - Business Action to Stop Counterfeiting and Piracy** - to connect all business sectors and cut across all national borders in the fight against counterfeiting and piracy. This global approach is designed to support individual company and organizational efforts and amplify business messages with national governments and intergovernmental organizations.

BASCAP unites the global business community so as to more efficiently identify and address intellectual property rights issues and petition for greater commitments by local, national and international officials in the enforcement and protection of intellectual property rights. While carrying out these functions BASCAP also works to increase public awareness of the problems and dangers associated with intellectual property right violations

### The Goals

- Increase public and political awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm
- Compel government action and the allocation of resources towards improved IPR enforcement
- Create a culture change where intellectual property is respected and protected

Who? National associations			





*Who?* Regional/Int'l associations

*Who?* Intergovernmental organizations

More details can be had from <http://www.iccwbo.org>



## INDIA-IP ROUND UP

### NIPO

NIPO conducted a series of lectures and presentations during the year starting with a talk on **IPR awareness** at Forest Research Institute Dehradun and Lal Bahadur Shastri National Academy of Administration Mussorie in October 2006. This was followed by a Lecture on **“Strengthening IP Regime : Need for IP Awareness & Education.”** by Dr. Brian Pangrle IP Attorney USA held collaboration with the Indian Institute of Public Administration as a part of the NIPO-IIPA MOU in November 2006. A talk on **“IPR’s – Human Rights & Sustainable Management of Natural Resources”** was delivered at a conference on Human Rights and IPR’s jointly organized by Amity University and the Ministry of Home Affairs in January 2007. This was followed by a presentation on Overview of Intellectual Property Rights for Indian Statistical Service Officers at Indian Institute of Public Administration New Delhi in February 2007.

NIPO along with FICCI co-organized the International Meeting on WIPO Development Agenda hosted by the Department of Industrial Policy & Promotion Government of India and WIPO in February 2007. A presentation on Border Measures for combating Piracy and Counterfeiting was delivered to Customs Officers at the Regional Training Institute for Customs and

Central Excise officers in August 2007.

### **World IP Day 2007 Activities**

**Federation of Indian Chambers of Commerce and Industry (FICCI)**, in collaboration with the Department of Industrial Policy and Promotion (DIPP) and WIPO, celebrated the IP week and launched an anti-piracy and counterfeiting campaign from April 20-26. A national seminar on “Piracy and Counterfeiting” was held with the participation of WIPO officials. Activities included the release of advertisements, broadcast of short anti-piracy clips on national and regional television and poster campaigns.

**The Asian Patent Attorneys Association (APAA), Indian Group** organized a seminar on the theme, “Encouraging Creativity,” in New Delhi.

**“Intellectual Property Lab”** a law firm of patent and trademark attorneys, based in Lucknow, sent proposals to the Federation of Indian Chambers of Commerce and Industry and the Indian Industries Association and the Uttar Pradesh Exports Promotion Bureau, offering free IP advice to their members.

**The Gujarat Chamber of Commerce and Industry (GCCCI)** hosted, a seminar on “Intellectual Property for Small and Medium Enterprises.” in Ahmedabad

**Department of Industrial Policy and Promotion (DIPP),**

### **Ministry of Commerce & Industry**

The Department of Industrial Policy and Promotion under the Ministry of Commerce & Industry is responsible for Intellectual Property Rights relating to Patents, Designs, Trade Marks and Geographical Indication of Goods and oversees the initiative relating to their promotion and protection. These include the outlining of policy and its implementation through the Office of the Controller General of Patents, Designs and Trade Marks. It promotes awareness regarding protection of the Intellectual Property Rights inherent in industrial property in conjunction with the World Intellectual Property Organization (WIPO) and apex industry organizations apart from similar initiatives involving regional industry associations. It also provides inputs on various issues relating to the Agreement on Trade Related Aspects of Intellectual Properties (TRIPS) related to World Trade Organization (WTO) in these fields. The Department undertakes technical cooperation programmes with the World Intellectual Property Organization (WIPO), Geneva for the modernization and up gradation of intellectual property administration relating to patents, designs, trademarks and geographical indications and the organization of Human Resource Development and



awareness generation activities in the country.

The major initiatives by the Department this year include modernization of IP infrastructure and establishment of new integrated offices in Delhi, Kolkata, Chennai and Mumbai. A programme costing Rs.153 crore has been implemented in the 10<sup>th</sup> Five Year Plan. The programme focused on: Infrastructure development; computerization; human resource development; training and awareness. Further modernisation of IP Offices to provide additional human resources, higher level of computerisation to support on-line processing, strengthening of data-base and novelty search facilities, awareness generation activities, accession to international treaties/conventions is being taken up in 11<sup>th</sup> Five Year Plan. The Department has introduced e-filing facility for patent and trademark applications. Along with the legislation, rules have also been amended to install a user-friendly system for processing of IP applications. All rules and forms are available on the website: <http://www.ipindia.nic.in>.

These initiatives along with the legislative reforms which were already in place have resulted in increase in filing of patent applications from 4824 in the year 1999-2000 to 28,882 applications in the year 2006-2007. The number of applications examined has also gone up to 14,119 in 2006-07 against the figure of 2824 in the year 1999-2000. A total of 7359 patents have been granted in 2006-07.

The backlog of unexamined trademark applications of approximately 5 lakh cases has been brought down to zero. Renewal of Trademarks certificates is being done instantaneously in clear cases and new applications are examined within one week. As against only 8,010 registrations in 1999-2000, 109,361 (13 times more) TMs were registered in 2006-07. 3.38 lakh trademark certificates were issued during the last 3 years whereas only 1.65 lakh marks were registered in 64 years (since 1940 to 2004).

39 Geographical Indications products have been registered since September, 2003. These include Darjeeling Tea, Chanderi Saree, Pochanpally Ikat, Solapur Chaddar, Mysore Silk, Kullu Shawl, Bidriware, etc. The filing of applications for Designs has increased from 2874 in 1999-2000 to 5372 in 2006-07. The number of applications examined has also gone up to 5179 in 2006-07 against the figure of 2067 in 1999-2000 and the number of Designs registered has also increased from 1382 in 1999-2000 to 4431 in 2006-07.

The Government has approved a proposal for establishment of a **National Institute for Intellectual Property Management (NIIPM)** at Nagpur. The Institute will perform training, education, research and think tank functions. Further modernisation of IP Offices to provide additional human resources, higher level of computerisation to support on-line processing, strengthening

of data-base and novelty search facilities, awareness generation activities, accession to international treaties/conventions is being taken up in 11<sup>th</sup> Five Year Plan.

An exercise to amend the Trade Marks Act is underway to enable India to join the Madrid Protocol. The Madrid Protocol, administered by WIPO is a simple, facilitative and cost effective system for registration of International Trademarks. India's membership of Madrid Protocol will help Indian companies to register their trade marks in the member countries of the Protocol through a single application.

WIPO has granted recognition to the Indian Patent Office as an International Searching Authority (ISA) and International Preliminary Examining Authority (IPEA) under the Patent Co-operation Treaty in the Assemblies of the Member States which concluded in Geneva in October this year. ISA and IPEAs provide search reports on novelty and examination reports on patentability of inventions.

#### IPR Bilateral Agreements

- MOU between the Ministry of Commerce and Industry of India and the Federal Department of Economic Affairs of Switzerland on Intellectual Property
- MOU on Cooperation between Ministry of Commerce and Industry of the Republic of India and Ministry of Economy, Trade & Industry, Japan



- Joint Statement of Intent of Bilateral Cooperation between Indian and the UK on IPR
- MOU between Ministry of Commerce & Industry of the Republic of India and Ministry of Economy, Finance and Industry of the Republic of France
- MOU on Bilateral Cooperation between Office of the Controller General of Patents, Designs, and Trade Marks (CGPDTM) and European Patent Office (EPO)
- MOU on Bilateral Cooperation between CGPDTM, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry of the Republic of India and The United States Patent and Trademarks Office, U.S. Department of Commerce.

**Ministry of Human Resource Development (HRD),  
Department of Secondary & Higher Education**

**Copyright Act**

The Copyright Office under the Department of Secondary and Higher Education in the Ministry of Human Resource Development has taken several measures to strengthen the enforcement of copyright. These include setting up of Copyright Enforcement Advisory Council, organization of seminars/workshops to create greater awareness about copyright law among the enforcement personnel and the general public, setting up of collective administration societies and creation of

separate cells in state police headquarters. The States and Union Territories of Assam, Goa, Gujarat, Haryana, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Meghalaya, Orissa, Rajasthan, Sikkim, Tamil Nadu, West Bengal, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli and Daman & Diu have either set up copyright enforcement cells or special cells in the Crime Branch to look after copyright offence cases.

In order to facilitate proper coordination between the industry and the enforcement agencies in the matter of enforcement of copyright laws, the Ministry requested the State Governments to designate nodal officers. The States of Andhra Pradesh, Goa, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Tripura, Uttar Pradesh and West Bengal and the Union Territories of Chandigarh, Daman & Diu, Lakshadweep and Pondicherry have designated nodal officers.

The Copyright Enforcement Advisory Council (CEAC) was set up on November 6, 1991 to review the progress of enforcement of the Copyright Act periodically and to advise the government regarding measures for improving the enforcement of the Act. The term of Copyright Enforcement Advisory Committee is 3 years. The CEAC is reconstituted after periodically after expiry of the term. The current CEAC has been reconstituted on 22nd February, 2005 for a period of 3 years.

The Copyright (Amendment) Act, 1994 provides for setting up separate Copyright Societies for different categories of works. So far four Copyright Societies have been registered: one each for cinematograph films (Society for Copyright Regulation of Indian Producers of Films and Television, SCRIPT), musical works (Indian Performing Right Society Limited, IPRS) and sound recordings (Phonographic Performance Limited, PPL) and the last one recently established is the Indian Reprographic Rights Organization (IRRO) for books/literature/artistic photocopy rights. These societies have been actively participating in generating awareness about Copyright and IPR issues. They also have set up their own Anti Piracy Cells which in collaboration with Police/Enforcement authorities have been actively engaged in curbing piracy in musical/sound recording works. Department of Secondary and Higher Education interacts frequently with these Copyright Societies and encourages them to be proactive in the field of Copyright Administration.

The Department implements a Scheme of Intellectual Property Education, Research and Public Outreach for effective implementation of the cause of promoting awareness/research on Copyright/IPRs and WTO matters. Under the Scheme, financial assistance is provided to UGC recognized universities, institutions affiliated to those universities, educational institutions, Copyright Societies and Registered voluntary



organizations for creating general awareness by way of organizing seminars and workshops on Copyright matters and carrying out activities on IPR related matters.

The Copyright Act in India was enacted in the year 1957. It has been amended five times since then, once each in the years 1982, 1984, 1992, 1994 and 1999. Though the amendment in the year 1994 was quite comprehensive, only minor changes were introduced through the amendment made in the year 1999 to bring the Act in conformity with the TRIPS Agreement.

In order to keep pace with the developments at national and international level, particularly with the rapid advance of technology, it has become necessary to consider amendments to the Act once again. The Government of India has asked for suggestions from various individuals, stakeholders, experts and industries in the Copyright Act, to make it more effective and amendments to the Act are expected to be finalized shortly.

### **Ministry of Agriculture**

#### **Plant Variety and Farmers Rights Protection Act (PVPFR)**

In order to provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants it has been considered necessary to recognize and protect the rights of the farmers in respect of their contribution made at

any time in conserving, improving and making available plant genetic resources for the development of the new plant varieties. Moreover to accelerate agricultural development, it is necessary to protect plants breeders' rights to stimulate investment for research and development for the development of new plant varieties.

Such protection is likely to facilitate the growth of the seed industry which will ensure the availability of high quality seeds and planting material to the farmers. India having ratified the Agreement on Trade Related Aspects of the Intellectual Property Rights has to make provision for giving effect to Agreement. To give effect to the aforesaid objectives the Protection of Plant Varieties and Farmers' Rights Act, 2001 has been enacted in India. For the purposes of this Act, Protection of Plant Varieties and Farmers' Rights Authority has been established and is located at NASC Complex, DPS Marg, Opp-Todapur, New Delhi. The Authority has received a total of 140 applications (uptill October 2007) for registration of new, extant and farmers varieties for rice, wheat, millet, maize, sorghum, pigeon pea, blackgram and green gram. Details are available at <http://www.plantauthority.in>.

### **Ministry of Information Technology**

#### **Semiconductor Integrated Circuits Layout-Design Registry (SICLDR)**

The Semiconductor Integrated Circuits Layout-Design Registry (SICLDR) for receiving IPR

applications and granting Registrations to qualifying cases has been set up in the Department of Information Technology, Electronics Niketan, 6 CGO Complex, Lodi Road, New Delhi. Frequently Asked Questions on Semiconductor Integrated Circuits Layout-Design Act, 2000 are at <http://www.mit.gov.in>

### **Ministry of Environment & Forests**

#### **Biological Diversity Act**

The National Biodiversity Authority (NBA) located at Chennai is conducting a Survey of Indian Biodiversity databases the National Biodiversity Information System (NBIS). The NBA approved 54 applications for Intellectual Property Rights during 2006-07. The NBA would soon form guidelines for identifying, declaring and managing Biodiversity Heritage sites in the country. State Biodiversity Boards (SBB's) have been notified and constituted in about 18 States/Ut's. Details are available at <http://www.nbaindia.org>

### **Ministry of Science & Technology**

#### **Technology Information, Forecasting & Assessment Council-TIFAC**

TIFAC, an autonomous organization under Department of Science and Technology aims to keep a technology watch on global trends and formulating preferred technology options for India. The Patent facilitation Centre of TIFAC has conducted 305 awareness workshops sensitizing about 3200



scientists, technologists and policy makers from 85 universities, 100 R&D institutions and 150 industries. Besides providing assistance for filing patent applications, the centre provides patent search services through two databases viz. Ekaswa-A : Patent applications filed in India as published in the issues of the Gazette of India (Part III, Section 2) from January 1995 onwards and Ekaswa-B : Patent applications notified for opposition in the Gazette of India (Part III, Section 2) published from January 1995 onwards.

### **Biotechnology Patent Facilitating Cell (BPFC) Department of Biotechnology**

During few years of its existence, BPFC has carved out a unique identity of its own among the biologists and biotechnologists in the country; with several achievements in the field of technology development in the Indian context. BPFC has facilitated filing more than 100 Indian and international patent applications out of which more than 10 patents have been granted. BPFC now look forward to Industry for taking up of these technologies to the market and to the consumers.

The BPFC has organized a series of national roving seminars on "Patenting in Biotechnology" and "IPR in Biotechnology" at various institutions and universities around the country, in collaboration with World Intellectual Property Organization (WIPO), Geneva, to enhance the awareness of the scientists about the

inventions, process of patenting, issues in IPR in biotechnology and the strategic importance of the IPR in post-GATT era.

In order to promote basic understanding of patents and other IPR-related issues among the Indian scientists, and to analyze issues in the area of patenting in biotechnology, department has initiated one-week refresher courses on IPR in biotechnology for officers and scientists at the National Law School of India University, Bangalore which will be held four times in a year. The four such courses were held during the last financial year. Through these training programmes, it is intended to create awareness about the need for protection of intellectual property generated by the scientists in biotechnology and its identification, utilization, IPR regime in the country and outside, the procedures and nuances of writing patent documents with description and claims and issues associated with the protection of live forms, international patenting, product patents etc.

### **National Institute of Science Communications and Information Resources (NISCAIR)**

TKDL access agreement with International Patent offices has been permitted by the Government. Access to TKDL would be secured and shall be utilized by the examiners of Patent offices for patent search and examination purpose only. Negotiations with leading International Patent Offices are in an advanced stage. Two

journals published by the institute namely Indian Journal of Traditional Knowledge(IJTK) and Medicinal and Aromatic Plants Abstracts (MAPA) have been included in the PCT minimum list.

### **Ministry of Finance**

#### **Central Board of Excise and Customs**

The Indian Customs has issued a notification No 49/2007-Customs dated 8-5-2007 which prohibits import of goods infringing intellectual property rights of the right holders under the Copyright Act, 1957, the Trade Marks Act, 1999, the Patents Act, 1970, the Designs Act, 2000 and the Geographical Indications of Goods (Registration and Protection) Act, 1999. Besides, the procedure for registration of a notice with the Customs by right holders and the conditions for such registration, etc. have been laid down in the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 notified under notification 47/2007-Customs (NT) dated the 8<sup>th</sup> May, 2007 (hereinafter referred to as the said Rules). The said Rules lay down a detailed procedure to be followed by the right holders or their authorized representatives as also by the Customs for seeking suspension of release of suspect imported goods.

It is pertinent to mention that while the mandatory obligations under Articles 51 to 60 of the TRIPS dealing with border measures are restricted to Copyright and Trade Marks infringement only, the above Rules deal with Patents,



Designs and Geographical Indications violations as well, in conformity with the practice prevailing in some other countries, notably EU countries. The notification states that while it is not difficult for Customs officers to determine Copyright and Trade Marks infringements at the border based on available data/inputs, it may not be so in the case of the other three violations, unless the offences have already been established by a judicial pronouncement in India and the Customs is called upon or required to merely implement such order. In other words, extreme caution needs to be exercised at the time of determination of infringement of these three intellectual property rights.

#### **Ministry of Tribal Affairs**

Ministry of Tribal Affairs has prepared a draft of the National Tribal Policy. The policy provides for regulatory protection, socio-economic and political empowerment, development of infrastructure, increased livelihood opportunities, improved governance and administration, preservation of cultural and traditional rights and traditional knowledge, protection of traditional knowledge in the intellectual property rights regime and access to privileges and includes measures to support and preserve the rich tribal culture, tradition heritage, arts and crafts, dance and music through documentation and dissemination, market linkages, cultural festivals and melas and encouragement and support of tribal artists, and folk art performers. Efforts will be

made to preserve, document and promote traditional wisdom.

#### **Ministry of Culture**

The ministry of culture is slated to implement new plan schemes in the XIth Five year Plan, including safeguarding intangible heritage and cultural diversity, awareness creation in the area of intellectual property rights and setting up of national IPR cell for artists and artisans, promotion and dissemination of awareness about Indian culture and heritage, cultural heritage volunteers scheme and a pilot scheme for cultural industries.

#### **Ministry of Information & Broadcasting**

The Ministry of Information and Broadcasting has taken the following major steps to fight piracy in the film sector:

- Under a Plan Scheme of this Ministry, action is under way to formulate appropriate training modules for police officers to train them for anti-piracy measures. A Training Manual will be circulated among State Government for training of police officials.
- This Ministry in consultation with the Federation of Indian Chambers of Commerce and Industry (FICCI) and other stakeholders, is examining the need to enact an Optical Disc Law to counter piracy in the entertainment sector. FICCI has set up a Working Group on Optical Disc Law, which has submitted a draft law in this regard.
- In addition to this, the Ministry is planning to examine the efficacy of digital cinema exhibition, in matters relating to Piracy

and issues related to the exhibition sector. Due to encrypted signals and delivery through satellite to the server directly, digital cinema exhibition may help address these issues. In pursuance of the decision taken by the Hon'ble Minister of Information and Broadcasting during the meeting with Film Industry representatives recently, a Core Group on Piracy, in the Exhibition Sector including Multiplex and Issues of Certification, had been set up under the Chairpersonship of Smt. Shabana Azmi. The recommendations of this Core Group are under examination in the Ministry for preparing the basis for the future course of action considered necessary to combat the menace of piracy in the Film and Music Sector. Piracy of films and music is one of the important issues related to the entertainment sector and by addressing the issue meaningfully; this Ministry seeks to enhance the potential of this sector.

- Actions proposed for State Governments to combat piracy are as follows:
  - Creation of a Nodal Officer in each state for enforcement of provisions of Copyright Act.
  - Creation of Special Cell/Wing under the state police for the enforcement of Copyright;
  - State Government(s) may suggest use of any other legislation to tackle piracy
- An aspect of the IPR regime is the denial of legitimate use



of content for broadcasting purposes even after the content has been published/ reproduced or performed in public. The present Copyright law provides for compulsory licensing for only of complainant while the problem is being faced by most of the broadcasters. The Ministry therefore, proposes to provide for compulsory licensing for more than one complainant.

### **Ministry of Health and Family Welfare**

The WTO Cell in the Ministry of Health and Family Welfare works on ascertaining impacts on public health due to globalisation and suggests ways to formulate effective legislation and policy initiatives to deal with it.

In particular, the function of the WTO Cell includes providing technical assistance to the MoH&FW in the area of international trade related agreements, such as TRIPS, GATS, SPS and TBT.

Since its inception, the WTO cell has organized workshops with a view to raise issues of concern as well as commissioned studies to fill gaps in existing information. Some of studies undertaken include impact of TRIPS on drug prices, competition law policy, and impact of off-shoring of clinical trials amongst others. The WHO along with the MoH&FW is committed to strengthening the understanding and analyzing the implications of trade agreements on access to medicines and health care in India.

### **EU India TIDP :**

The EU-India Trade and Investment Development Programme (TIDP) embodies the Strategic Partnership between Europe and India which seeks to strengthen relations between the two global powers through tangible cooperation activities that bring benefits to both sides. TIDP's objective is to assist India in creating an environment that encourages trade and investment. The rationale of the programme is that by improving trade and investment ties between India and Europe, businesses will expand, incomes will rise, jobs will be created and consumers will benefit from more choice and lower prices.

The programme has six components of which an important component is on mainstreaming IPR administrative and enforcement infrastructure with international best practices. The IPR component of the TIDP has the following main focus areas:

- Capacity building of IPOs by training of IP officials, enforcement agencies including customs, police and judiciary;
- Institution building by strengthening the data base and creation of a help desk;
- Awareness raising and outreach activities targeting R&D institutions, SMEs, Corporates, academics and intellectuals;
- Studies and Surveys

The achievements of the IPR component include preparation of a Current Status Report for

the Department of Industrial Policy & Promotion, detailing the existing situation of the IPR framework in India and identifying the existing gaps and steps intended to be taken under TIDP to deal with many of these. A series of training programmes for the IP officials – Assistant Controllers, Examiners and patent officials – have been planned in consultation with DIPP and are being executed. Furthermore, training sessions for enforcement officials have been planned and executed and sector specific programmes on the pharma and biotech, IT and electronics, trademarks and GI have also been conducted.. Training materials are being consolidated and separate training manuals are under preparation in consultation with foreign experts which will be presented to the IPOs and IPTI, Nagpur, at the conclusion of all trainings. A number of awareness programmes for corporates, small and medium enterprises academics and intellectuals have also been conducted in various cities under the programme.

The programme envisages setting up of an IPR helpdesk and signing an MoU for exchange of databases between EPO and IPOs.

### **National Manufacturing Competitiveness Council (NMCC)**

The NMCC has setup a portal for Micro, Small & Medium Enterprises which includes specific information on IPR's to achieve niche Competitiveness. Details are available at <http://nmcc-vikas.in>



### **Federation of Indian Chambers of Commerce & Industry (FICCI)**

The FICCI-National Initiative against Piracy and Counterfeiting (FICCI-NIAPC) was setup in the year 2003 to create awareness about the menace of piracy and counterfeiting and to take initiatives to fight this scourge with a vision of creating an environment where innovations are rewarded and creative entities flourish.

The initiative aims to promote awareness of the dangers and consequences of piracy and to strengthen the capacities of the enforcement system in association with professional bodies, training institutions and concerned departments of the Government. The National Initiative has four specific advocacy functions viz. policy and legislative issues; judicial issues; enforcement issues and awareness campaigns. FICCI – NIAPC has undertaken mass awareness campaigns against Piracy and Counterfeiting through interactive events, PR and advertising campaigns. Two small ad films on Anti –Piracy were produced which are being telecast on major television channels and are also being shown in multiplexes. FICCI has also engaged the Judiciary in a participative fashion and make them aware of the seriousness of the issue. FICCI-NIAPC has organized programmes for the State Judicial Academy of Madhya Pradesh in Bhopal, a Judges' Round Table Conference on IPR Adjudication on Eastern Region at Kolkata and two Judges' Round Table Conferences on IPR

Adjudication at Bangalore for the Karnataka High Court.

FICCI in its drive against Piracy and Counterfeiting celebrated Intellectual Property Week starting April 20, 2007 culminating into the World IP day on April 26, 2007. A National Seminar-"Combating Counterfeiting and Piracy" was organized at New Delhi to mark the day. The weeklong celebration included Poster campaigns; email blasts; banners on major websites; TV Spot and radio jingles in major regional languages; advertisement in newspapers and training programmes for the customs officers in various states. FICCI proposes to conduct "Intellectual Property Rights (IPR) Sensitization" programmes in various cities across India.

FICCI has recently forwarded a draft Optical Disc law to the Ministry of Information and Broadcasting for consideration. The proposed Law would enable an effective enforcement policy to tackle Optical Disc Piracy. FICCI-NIAPC has been actively providing policy inputs for all IP related initiatives being taken by the Government and international organizations including the World Intellectual Property Organization and is currently working on the proposed "Innovation Law" intended to create a supporting framework to spur innovation and develop an innovation culture in the country.

### **Confederation of Indian Industry (CII)**

The Confederation of Indian Industry has set up a National

Committee on IPR with a view to enable Indian Industry enhance competitiveness through IPR and to promote Creativity, Invention & Innovation in Indian organizations. The Committee works in the areas of key policy issues connected to IPR; awareness creation and orientation in IPR; provide services to encourage Industry to imbibe an IP culture & capacity building in IP Policy / IP Management and building partnerships with national and global organization in IPR areas. CII has also set up a National Committee on Trade Mark and counterfeit products with the objective to engage government to create conducive legislative measures, policy levels reform and impressing government to adopt stringent enforcement initiatives and exemplary punitive and monetary measures to further safeguard and secure the interest of industry. The committee would sensitize and facilitate capability building among IP owners and enforcement agencies, increase awareness among general public on Counterfeiting by conducting campaigns, road shows etc. CII also proposes to establish regional/state level Anti-Counterfeiting & Piracy Cell (ACPC) under Public Private Partnership for sharing information between business, enforcement authorities and others involved in combating counterfeiting and piracy and to take actions for combating counterfeiting and piracy and also intends to network and partner with International organizations/associations dealing with anti-counterfeiting



issues. The committee would provide expert / legal advice to member industries and regularly update all the stakeholders and conduct studies on Counterfeiting and piracy and on the impact of Counterfeiting on Industry, consumers and government. CII-APTDC has an IPR facilitation cell set up with the joint effort of CII, Govt. of Andhra Pradesh and TIFAC at Hyderabad. The cell provides services such as patentability assessment reports; search facilities and facilitates IP protection and is a service provider in India for GI study & Protection. CII has held various IP related programmes in 2007 which include National workshop on Demystifying IPRs; WIPO Inter-Regional Forum on Leveraging Intellectual Property for Knowledge-Based Development And National Wealth Creation; National IP skill enhancement program and an international conference on Counterfeiting & Piracy. CII and the Worldwide Academy of the World Intellectual Property Organization (WIPO), Geneva also organized an Executive Program on Strategic Intellectual property (IP) management at Goa.

### US Embassy

The United States Patent and Trademark Office (USPTO) of the US Embassy, New Delhi has been involved in several IP related activities. A few of these activities are as follows:

- Memorandum of Understanding on bilateral co-operation was signed on

December 6, 2006 between the office of the Controller General of Patents, Designs and Trade Marks, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry of the Republic of India and The United States Patent and Trademark office, U.S. Department of Commerce. An Action Plan has also been signed under this MoU.

- US Embassy, in collaboration with FICCI, partnered with CBP, ICE and Indian Customs to train 130 Customs officials on IP issues in Kolkatta, Chennai and Mumbai in April 2007.
- In May 2007, three patent examiners from the Indian patent office have been sent to the USPTO for an eight-month training on patent prosecution and examination under USPTO's Foreign Examiners-In-Residence Program.
- US Embassy participated in various conferences including Confederation of Indian Industry's "Importance of IP for SMEs" and "Anticounterfeiting & Piracy".
- US Embassy participated in the Business Software Alliance Roundtable study on "The means to compete: Benchmarking IT industry competitiveness" in August 2007.
- US Embassy participated in CII National Committee of IP Owners in August 2007.

- US Embassy led pharmaceutical trade delegation in New Delhi in September 2007.
- US Embassy participated in a WIPO-sponsored IP management program in Goa in March 2007.
- US Embassy participated in Trade Policy Forum's meetings and Digital Video Conferences in New Delhi.
- US Embassy spoke at an Association of Biotechnology Led Industries and Department of Biotechnology cosponsored program in Bangalore in October 2007.
- The GOI has also been actively participating in the trainings that have been organized by Global Intellectual Property Academy.
- US Embassy in collaboration with the Federation of Indian Chambers of Commerce and Industry (FICCI), conducted a three city IPR Roadshow in the cities of Ludhiana (Oct 3), Bhopal (Oct 9) and Raipur (Oct 11) in October 2007. The purpose of the roadshows was to increase public awareness of the role of IPR protection in promoting economic growth, innovation, and prosperity.
- An IPR awareness seminar was conducted in Chandigarh on October 27, 2007 in collaboration with a local industry partner, KPO Consultants.



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**ARTICLES & REVIEWS**

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