NATIONAL INTELLECTUAL PROPERTY RIGHTS POLICY

("NIPP")

INDUSTRY CONCERNS AND SUGGESTIONS

PREFACE

The ability of any nation to retain a competitive edge in the world rests on its ability to innovate as well as create & maintain an environment which aims to nurture, protect & sustain innovation. Innovation drives growth and positive social change particularly so in countries such as India which are reaping and will continue to reap the windfall of a younger demographic in the coming decades. In September 2010, the Government of India "realizing that innovation is the engine for national and global growth, employment, competitiveness and sharing of opportunities in the 21st century", declared 2010-2020 as the 'Decade of Innovation'.

India needs innovation to not only ensure it remains competitive on the world stage but also to deliver to its various sections the benefits of innovation ranging from hardier crop varieties and weather information to advanced Medicare and drugs. In order to reconcile, develop & sustain a national effort at bolstering innovation, and ensuring the protecting of arising Intellectual Property Rights including international IP in India, a unified vision and "mission statement" is required. This unified and harmonized "Policy" road map is even more critical given that the responsibility for the different IPR species rests with different arms of the Government leading to a fragmentized effort which at the end of the day falls short of ensuring robust as well as just laws, regulations aimed at protecting and equally importantly balancing such exclusive rights with the national interest.

The Constitution of India has defined and enlisted Subjects under the List-I of its Seventh Schedule, which form the exclusive domain of the Central Government of the Union of India excluding all the states and the union territories. Entry 49 of the said Union List mentions "Patents, Inventions and Designs, Copyright, Trade Marks and Merchandise Marks", although there is no direct mention of the phrase "intellectual property". It is gratifying to note that BJP Manifesto recognizes the crucial role that intellectual property plays in fostering innovation and creativity, accelerating growth and enhancing competitiveness of industry and business.

India is a party to and is compliant of the following International IPR Treaties:

- Berne Convention (copyright) – since 1928
- Convention Establishing the World Intellectual Property Organization – Since 1975
- Madrid Protocol (trade marks) –since 2013
- Paris Convention (priority rights) – since 1998
- Patent Cooperation Treaty (patents) – since 1998
- World Trade Organization (WTO) /Trade Related Aspects of Intellectual Property Rights (TRIPS) – since 1995

- Nairobi Treaty (Protection of the Olympic Symbol)- since 1983
- Rome Convention (Protection of Performers, Producers of Phonograms and Broadcasting Organizations)-since 1961
- Budapest Treaty (the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure) –since 2001
- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled – Since 2014
- Washington Treaty on Intellectual Property in Respect of Integrated Circuits – Since 1990
- Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms – Since 1971

In India securing its rightful place among the leading nations of the world, it cannot ignore and must in fact make every effort to fulfill its International obligations as a responsible member of the World Trade Organization and related treaties and compacts.

This policy framework seeks to protect & further IP and recognize the importance of innovation being a prime driver of and benefits of securing India's ascendancy on the global stage. In order to ensure that innovation in India is able to contribute to Indian social and economic development, Intellectual Property Rights must be assessed, recognized and protected as a critical asset in informing and contributing to Indian growth trajectory. This document discusses a proposed National Intellectual Property Rights Policy ("**NIPP**") and seeks to scope the basic parameters of any such policy which maybe considered desirable.

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National IPR Policy ("NIPP")

A National IP Rights Policy will allow India to focus its IP policy framework, coordinate national level responses in policy development and base any policy changes on national and international imperatives, taking into account broad based stakeholder inputs.

1.1 The Intention

The NIPP must be complimentary to and must act as an enabler for the nation's existing innovation focus & industry policy framework. The NIPP will thus:

i. ***highlight & confirm*** the intention of India to stand as a true knowledge & innovation based economy utilizing among other tools Intellectual Property rights as an enabler of innovation;

ii. scope the creation and maintenance of an "IP culture' at different education levels as well at Industry level allowing the nation to source the required human capital allowing it to maintain as well as create IP capital and finally;

iii. ***Strengthen***, from a policy and 'nuts and bolts' perspective, the ***legal framework*** allowing for enhanced and efficient protection being accorded to IP, taking into account national imperatives and interests.

iv. ***Leverage*** the full potential of IP for national development, growth, technology transfer, investment and trade.

v. ***facilitate*** India in playing an enhanced and more positive role in IP deliberations and policy development in international fora.

vi. ***emphasize*** IP as reward for creativity and innovation; as a tool for incentivizing research & innovation rather than a bundle of monopolistic rights.

1.2 Scope of the NIPP

The scope of the IP Policy covers all enacted IPR laws of India and the Government Ministries and Agencies which are responsible for adjudication, formulation, implementation, interpretation, and execution of the IPR Laws and covers the following:

i. Union Ministry of Industry & Commerce
ii. Union Ministry of Human Resource Development
iii. Union Ministry of Science & Technology
iv. Union Ministry of Information Technology
v. Union Ministry of Law & Justice
vi. Union Ministry of Home Affairs
vii. Union Ministry of Information and Broadcasting
viii. Telecom Regulatory Authority of India
ix. The Judiciary including but not limited to Telecom Disputes Settlement Appellate Tribunal, Copyright Board and other IP Tribunals
x. Prasar Bharati
xi. States/UTs Departments and agencies thereunder
xii. Public Sector Undertakings
xiii. Public R&D Organizations
xiv. Publicly funded institutions and organizations
xv. Private Sector
xvi. Academia

1.3 The NIPP - "Aims" & "Objectives"

The NIPP should include as an objective the right of all citizens to benefit from the progressive developments in the field of science and technology, as well as new creations from across sectors. The policy should also clearly state that the grant of intellectual property rights are for the use of the protected property in India, without discrimination towards any of the players on the basis of their primary place of business or the business model they follow. The Strategy should also seek to promote dialogue between holders of IP, industry, users of IP and government such that there is a clear strategy for commercial exploitation of the property. Whether innovation originates in universities or in communities of craftspeople requiring GI protection, the objective should be to promote a business and R&D strategy which will lead to commercial exploitation and thus result in unlocking of the wealth inherent in the creation.

The basic aims of the National Intellectual Property and Innovation Policy (NIPIP) must be to:

i. ***Promote*** the development and dissemination of a culture of innovation and creativity in India so that all citizens can benefit from the progressive developments in the fields of arts, science and technology.
ii. ***Facilitate, mobilize, protect and encourage*** the use of IPRs for economic and social development in India;
iii. ***Enhance*** the knowledge, scientific and IT-based skills and

competencies to enable India to compete effectively in the international sphere in step with the fast-changing economic and business environment;

iv. ***Encourage sustainable, useful and affordable innovation*** practices and culture, at all levels of private and public contribution, for the overall growth of the economy and society.

v. ***Support non-indigenous endeavors*** with the objective of facilitating technology transfer to India, recognizing the positive correlation between robust protections, foreign direct investment, and development in order to encourage the growth of Indian industry as a service and manufacturing hub and incubator for creativity and innovation.

vi. ***seek to maintain a balance*** between the rights of the creators / innovators of inventions/innovations and the larger public interest within the recognized international legal framework, to ensure that benefits of creativity, ideation, innovation, invention, science and technology pass on to the people in an equitable way. The rights should support the freedom to further innovate beyond the stated inventions, while maintaining incentives that support innovation and creativity.

vii. ***establishing an enabling regime of protection and monetization*** for inventions and innovations which ensure that rights holders and "IP creators" like innovators are able to reap moral and economic benefits from their creations and rights. This will entail strengthening the infrastructure for securing the property rights on the intellectual contribution by the creator, creating a culture which respects intellectual property rights and empowering right holders and creators to maintain the integrity of their innovation/property through effective enforcement.

viii. ***support need based revision and amendments*** of intellectual property laws with the changing times and demands, unify the formulation, administration and implementation of various IP laws and policies in the country, prevent value erosion of IP arising from contradictory legislations and also meet crisis situations affecting the health and wellbeing of the people of India.

xvii. ***Foster the creation*** of an environment which promotes, encourages appreciation and understanding of IP as an enabler of innovation and driver of national growth as well as contributor to the national economy;

xviii. ***Create / sustain capacity and infrastructure*** to encourage the (i) creation and (ii) effective protection of IP;

xix. ***Create and sustain policy & infrastructure*** which encourages and protects the effective "up-stream" and "down-stream" exploitation of IP.

xx. ***Integrating IP needs, priorities and concerns*** of all sectors in the

overall economic, social and cultural development policies of the country.

xxi. ***Promote respect for IP*** in the society and enable effective combating of the ills of infringement, piracy and counterfeiting.

xxii. Provide the ***strategic framework for further modernization*** of the legislative, administrative, institutional infrastructure and creation of human capital in the area of IP. It must lay down guidelines for creation, protection, utilization and commercialization of IP assets by all creators, innovators and productive sectors of the economy.

In seeking to achieve the above mentioned broad aims the Policy will need to scope specific deliverables in order to realize the 'Aims' outlined in the national IP Policy.

2. Establishing the role & importance of Intellectual Property

A critical jump off point to establishing an "IP culture" to drive, and bring to fruition an "innovation culture" in sensitizing and educating the general public about the role played by intellectual property as a driver of national growth and contributor to the economy. Even more importantly an appreciation or awareness of intellectual property particularly the species of intellectual property is seen to be lacking at virtually every level of the education system until the stage of specialization which requires knowledge of intellectual property law. The result of the 'gap' is a shortage of specialized human capital as well as innovation based skill sets resulting in unfamiliarity with intellectual property and its role in bolstering and leveraging innovation.

The National Policy of Education 1986 as amended in 1992 ("NPE") foresaw the requirement to improve on R&D resources and improve conditions to generate additional and more efficient Human Capital geared towards R&D.

The NPE in effect sought to underscore the importance of education by referring to its *"accentuating role"* and ability to contribute to a *"scientific temper and independence of mind and spirit"*. Critically, in seeking to understand and highlight the essence of education the NPE recognized the role of education as "*the substrate on which research and development flourish, being the ultimate guarantee of national self-reliance".*
In assessing the role of R&D in the 'national education policy vision', the NPE in fact states that:

> *"6.13. Research as a means of renovation and renewal of education processes will be undertaken by all higher technical institutions. It will*

primarily aim at producing quality manpower capable of taking up R&D functions. Research for development will focus on improving present technologies, developing indigenous ones and enhancing production and productivity. A suitable system for watching and forecasting technology will be set up."

The NPE also incorporated the requirement to look at technical education and management education together instead of the earlier compartmentalized approach. This perspective arose from the observation that establishing linkages between technical and management fields was of utmost importance given that such linkages would allow India to enhance its ability to further improve its R&D ability and foster creativity. The NPE pointed out that, "*6.14. The scope for co-operation, collaboration and networking relationships between institutions at various levels with the user systems will be utilized. Proper maintenance and an attitude of innovation and improvement will be promoted systematically."*

Unfortunately, the NPE did not take into account the importance of IP sensitization and awareness education in enabling the stated aim of inculcating an "attitude of innovation". Accordingly as with the NinC, the NIPP should seek to support and complement the NPE. The NIPP should thus:

i. mandate a requirement for educational institutions, as well as national curriculum to introduce intellectual property at the Secondary and Higher School Levels so as to sensitize the 'citizen of tomorrow' to the importance of intellectual property in evolving a knowledge and innovation based economy and its enforcement and protection thereof;
ii. seek to ensure that R&D institutions funded by the Central & State Government sensitize the R&D community to the benefits of IP creation & capture.

2.1 Educational and R&D Institutions

In seeking to establish an IP culture within Indian education institutions including within R&D institutions, it will therefore be critical to achieve the following:

i. ***enhance & establish awareness of IP*** in educational institutions especially within institutions incorporating R&D functions & facilities;
ii. ***introduce IP based curriculum*** in high Schools, colleges and universities, include such enhancements to Central and State based Higher Secondary curriculum- this should include enlightened higher education policy making by MHRD encouraging Faculty exchange programs and Chairs enabling best in class global faculty engage with the issue of Faculty development and IP expertise building in India;
iii. ***establish linkages*** between IP institutes / Law Colleges with

established IP research and instruction centers and R&D centers as well as establish 'three way linkages' with business / management institutions to achieve the trinity of "IP -*awareness*, *capture* and *management/ monetization";*

iv. ***provide incentives*** for innovation and individual innovators

v. secure required human capital (including patent and trademark attorneys, copyright experts, agents, counselors) & ***funding inputs from Government towards basic IP education***, IP capture and networks Public IP evangelism programs in collaboration with Industry Associations; Govt. shows commitment through consistent participation in public forums

2.2 Government Institutions

It is equally critical that the effort to extend IP awareness translate to the very branches of State that are responsible to engendering and crafting a nation IP consensus. This therefore will require that the NIPP make allocation for and require extensive IP Sensitization Programs for Government, Judiciary and Enforcement Agencies at both Central, State and District levels. This will include incorporation of orientation and education modules at instructional stage for administrative, law enforcement and judiciary arms in India.

i. Introduce, in government / administrative training institutions, orientation and sensitization courses on IP as well as courses on the role of IP in national's economic development and competitiveness;

ii. Public-Private partnerships to share knowledge and experience around IP with Government Officials at all levels;

iii. Creation & updating of Ready reference templates and tools on IPR for Government officials;

iv. establish linkages with Industry and participation in Industry, State and national Innovation clusters as set up under the aegis of the NInC and various governments;

v. Establish IP week in Government celebrating entrepreneurship; national message by Commerce and Industry Minister;

vi. Outside the realms of academia and governance, public intellectual property programs should also be conducted by the government in collaboration with industry associations, so as to address the general public who may not be directly involved in the generation and commercialization of intellectual property.

2.3 IP Awareness & Capacity Building

National Awareness and Sensitization is an important step towards extricating IP infringements from the grass root level and to promote respect for IP among all sections of society. To serve this purpose the Government

Initiative towards spreading awareness and supporting awareness building activities must be mandated by NIPP. Efforts to combat piracy and counterfeiting by the enforcement machinery must be reassessed and redoubled. Implement IP in the school and college curriculum as a compulsory subject to imbibe amongst the youth of India the respect of IP and also to inspire innovation and creativity.

Capacity building of enforcement agencies is of utmost importance to tackle with infringements and offences relating to IP. Adequately trained enforcement agencies will carry out their responsibilities through systematic processes, hence IP must be made a part of the curriculum of training of Enforcement agencies. The enforcement agencies must be sensitized towards offences relating to IP laws including on-line and off-line piracy and the need for its enforcement. The linkage between IP Crimes and organized crime, black market operations and IP as threat to national security must be emphasized. Specialized wings such as the IP Enforcement Wing under the already existing Economic Offence Wings of the Indian Police System and Customs must be established to effectively address IP infringement related issues.

Training of the judiciary in the field of pharmaceutical patenting on the one hand and copyright subsisting in the works of IT sector and in the works of media and entertainment sector particularly broadcasting and films on the other would be helpful. Providing a greater understanding of the importance of IP in the pharmaceutical, media and entertainment and IT field, including for example the understanding of irreparable harm in the context of IP enforcement, would help the judiciary to balance the interests of the public on the one hand and the interests of the creative, innovation driven and research-based organizations on the other.

3. Create & Sustaining IP 'Creation', 'Capture' & Protection mechanisms

The NIPP should seek to ensure that within educational institutions, the creation of intellectual property in both public and private funded universities must be promoted. Similarly, the creation of intellectual property should also be promoted at other research institutes and also in private enterprise in general. Awareness of intellectual property and its associated commercial implications should thereby be enhanced within academic and enforcement environments so as to avoid the entire gamut of IP being looked at only from a pedantic point of view and having R&D in educational institutions exist in isolation.

3.1 Efficient IP Capture & Procurement framework for R&D /

Technical education Institutions

Enable Research & Development / technical education institutions in order to effectively and efficiently capture and procure intellectual property .The statutory landscape should seek to protect specifically, publicly and privately funded research within not only the traditional but also ever evolving confines of the available species of IP by making the necessary provisions for such institutions to:

(a). Secure funding to establish centers of creative excellence and to improve quality of R&D resources and facilities by expanding capacity and availability of resources to ensure or maximize IP capture (i.e. identification of innovation and marking such innovation for protection);

(b). Provide incentives to innovators within such institutions towards efficiently capturing intellectual property arising from their R&D activities;

(c). Enact & enforce the Publicly Funded Innovations (Protection) Bill, 2010 allowing benefits to inventors and to R&D institutions from commercialization of IP with clear delineation for ownership, benefit sharing and access; The said Bill also needs to be revisited to widen its scope so as to include within its fold initiatives from the private sector as well

(d). Provide resources in terms of human capital and funding towards securing statutory IP protection;

(e). Establish commercialization arms in each R&D enabled institution allowing such institutions to commercialize the fruits of R&D by allowing for subsidized filings fees for publicly and privately funded R&D institutions, exceptions from stamp duty for assignments and licensing of IP.

(f). Allow business schools such as the IIMs to enter into joint ventures/ incubations labs with R&D Institutions allowing cross synergies to maximize commercial exploitation of IP.

(g). Further, there should be integration and collaboration between universities, institutions and IP offices, and the execution of mechanisms to promote R&D and to protect intellectual property especially in the case of breakthrough technologies and inventions.

(h). Within academic environments, provision must be made for:

- securing necessary human resources and funds for filing, obtaining and managing IP grants
- improving the quality of the university/institution's R&D resources and facilities;
- granting monetary incentives to university/institution researchers for intellectual property creation;
- developing the skills of researchers and improving their mobility

and diversity;
- establishing University/Institute Technology Transfer Offices (TTOs).
- Create mechanisms to evaluate and audit IP emerging from Educational and Research & Development institutions to bolster the creation of IP.

3.2 PPP Models for R&D efforts

Recognition must be accorded to the fact that neither the public sector nor the private sector best function in complete isolation from each other, or without being linked to academia. In light of this, mechanisms for the sharing and exchange of information amongst the sectors must be developed, whether or not for the sharing of intellectual property alone. There are many ways in which it may be possible to achieve this. For example, some of the mechanisms which should be adopted are:

a. Building a Trust model between public funded R&D organization and the private sector;
b. Developing a Legal-aid program for public funded R&D institutions to develop appropriate processes and licensing competencies including Technology Transfer Offices (TTOs).

3.3 Encouraging & supporting grass roots innovation

It is important to take into account that intellectual property creation also occurs at the grassroots level although there is little doubt that such achieved creation is not actually indicative of potential intellectual property creation at that level. Potential areas where grassroots innovation is possible must therefore be identified, and mechanisms must be developed for knowledge dissemination and intellectual awareness among the innovators at the grassroots level, *inter alia,* by:

a. Establishing a national network of successful innovators at the grassroots level to share experiences and models of sustainable innovation;
b. Establishing Government-led initiatives to provide hands-on training and workshops for go-to-market strategies;
c. Creating a Government-supported or subsidized IP filings for innovators at the grassroots level. Encourage and promote filing of Foreign Patent/IP Applications
d. PPP model for education, training and sensitization of IP examiners

3.4 Streamlining IP Procurement & Prosecution- Transparency & Efficiency

The statutory framework mandating the filing, examination, opposition, grant and /or revocation of IP rights must be mandated by the NIPP to provide full value to IP owners and general public affecting by grant of such rights in the following manner:

i. Digitization, modernization and integration of the intellectual property offices in the country (for patents, trademarks, designs and copyrights as well as other rights data bases including for geographical indications, plant verities etc.) database and provision for online access to the general public. This would be beneficial not only in relation to the conduct of prior art searches but also in relation to the entire gamut of activities which the intellectual property offices undertake;

ii. The NIPP must aim at accelerating modernization of India's IP system to meet global standards of efficiency, quality and cost effectiveness. This can be achieved through high level of transparency and swift processes. The IP office has been modernized and has developed as an effective and transparent system, but the office of the Copyrights also needs to be modernized to make filling and search of copyrights stakeholder friendly and less cumbersome. The NIPP must create IP friendly and IP supportive institutions and network them.

iii. The policy must endeavour to establish a high level coordinating agency at PMO level or another high level (Ministry of Commerce or Finance) in the central government to integrate and guide work in all areas of IP.

iv. Formulate clearer Policy guidelines governing State and Central Government agencies relating to IPRs, Licenses of Trademark, Patented and Copyright products and their enforcement and protection.

v. Quick and effective examination of applications to register intellectual property by

- Requirement to maintain minimum staff levels in relation to IP Office examiners. An increase in the human resource capacity of the intellectual property offices should not be made in isolation. Instead, the personnel at the intellectual property offices (and, in particular, IP examiners) should be educated, trained and sensitized so as to be able to discharge their duties/functions in the best possible manner. In order to execute such training, it is advisable that inputs be taken from all sectors so as to give the greatest possible exposure to the relevant personnel. One way in which this could be achieved is through the PPP mode.
- The time lag between development of intellectual property and its protection is the biggest stumbling block in certain types of IP development in India. A chunk of monetary and intellectual capital remains pending and untapped. The GOI should set up mechanisms whereby participation of the private sector is sought

to provide feedback on the working of systems for the recognition of copyright and grant of patent and trademark rights and on the ways to facilitate expeditious grant and recognition

- Integration of data base for different species of IP allowing for efficient examination
- Regular training for IP Office examiners as wells as IP attorneys Government should conduct more seminars and courses for examiners as well as IP attorneys in order to impart better knowledge of law and procedural requirements. This is an important measure in order to ensure better coordination and effective functioning of Intellectual Property Offices as not only examiners but IP attorneys play a significant role in drafting and prosecuting applications. Strengthening the examination capability of IP Offices with a focus on the field of cutting-edge technologies and international application. It is vital to ensure that the knowledge bank of examiners is up to date with the latest technologies, and Patent Offices should have a system to keep a track of the latest technologies for which applications have been filed, and new examiners with relevant domain knowledge must be inducted in order to keep pace with the technological developments so that such applications may be better screened.
- Increasing human resource capacity of IP Offices: In order to have an effective system of grant of IP rights it is most important that IP offices should have appropriate workforce in order to reduce the time lag taken for an application to be examined/granted. This not only makes investments in IP less lucrative but at times renders IP worthless in case of fast changing technology. Further lack of human resource in IP Offices also impacts the output quality which is more troublesome than no grant.

vi. Government led recognition of IP best practices and facilitation of IP audits in companies to assess competiveness and innovation: Best practices from mature IP offices of other countries should also be adopted and implemented so that Indian intellectual property offices may benefit from the experience garnered in other countries, without having to engage in a long and arduous trial and error process to establish such best practices 'in-house'.

vii. Developing and utilizing effective patent and trademark examination system: In the area of patents the capabilities of the Indian Patent Offices should be strengthened by providing it with access to extensive database of technical data. Having this access will speed up patent examinations, which in turn will expedite the obtaining of a successful patent. Government of India should also take steps to expand and improve the functions of private prior art search organizations, so that

institutions both public and private can effectively evaluate patentability of their inventions properly on the occasion of patent application/examination requests, as well as take measures to promote publication of prior art search tools of the Patent Office and to impart its know-how on prior art searches. Moreover, from the viewpoint of enhancing efficiency while achieving expeditious and accurate patent examination, the Government of India may also look at requiring the applicants to conduct prior art searches and sharing the results with the Patent Office at the time of filing. Further as regards trade marks, examiners must be trained to better utilize the Trade Marks Registry database of prior registration in order to avoid granting of trade marks registrations which are similar or identical to prior registered marks.

viii. Provision of online databases: Government should take steps to generate databases of all the applications for grant of IP rights which should be publicly available to ensure better transparency and which will also result in putting the public on notice. The timing of when such data should be made available may be subject to specific conditions depending upon the nature of IP. As regards patents and trade marks, data base of granted or pending applications are already made available online, however more information such as annuities payments, oppositions etc should also be made available. Furthermore the NIPP must direct towards establishment of a complete IP database on the corresponding websites accessible to the industry stakeholders to will facilitate Indian industry to have access to state of the art technologies for making break-through and incremental innovations. In addition, it will further facilitate enhancing transfer of technologies and collaboration between Indian industry and foreign companies. Lack of Regulatory Data Protection (RDP) may be a strong deterrent for the R&D activities. Hence, appropriate RDP should be considered after grant of marketing approval in India

ix. Improving communication with applicants: The Government should improve communication with applicants/agents by providing them with information regarding the examination schedule, including the applications scheduled to be examined and the date of the examination. Electronic communication medium should be used more and more in order to expedite the process and for better track keeping.

3.5 Increasing efficiency in judicial adjudication of IP

The NIPP should seek to recognize that the judicial process would need considerable streamlining in the areas of competency, bandwidth and procedures. Additionally, legal framework would also need to support the adjudication process. This would thus require, for instance:

i. the NIPP should seek to expedite litigation timelines by recognizing the

limited statutory and commercial shelf life of intellectual property. The NIPP would seek to identify intellectual property litigation given its peculiarities as requiring expedited adjudication and mandate strict upper time limits disposal of such litigation by the courts,

ii. seek to enhance capacity, in a time bound manner, at lower and higher judiciary levels,

iii. utilization of experts to assist courts in IP cases- creating a database of experts with declared conflict positions as updated from time to time along with bio-data of such experts, creation of specialist IP courts to deal with IP cases thus allowing for faster resolution of IP cases.

iv. With a view of strengthening the competitiveness of intellectual property, which is decisively important for India to maintain its global edge, and in order to emphasize the intellectual property-oriented national policy both inside and outside of India, it is essential that cases relating to intellectual property may be subject to specialized courts or at least have special members among the sitting judges who are well versed with nature and laws relating to intellectual property. India should enhance the use of expert knowledge in intellectual property lawsuits. Having a well-trained judiciary would certainly significantly contribute to intellectual property protection by facilitating the speedy and logical conclusion of disputes. Various measures may be taken to effect this, including:

   (a). Developing judges who have strong knowledge of technologies and intellectual property;

   (b). Utilizing the expert committees/individuals to assist courts in relation to technological and commercial issues;

   (c). Establishing intellectual property courses in all judicial academies;

   (d). Establishing an international jurisdiction judges exchange program on intellectual property law; and

   (e). Appointing judges in intellectual property cases based on their familiarity with intellectual property issues.

v. Procedure Relating to Evidence

   (a). Procedural requirements of evidence law should also be revisited in order to provide effective enforcement especially in case of trade secrets. For example obligation to produce documents containing trade secrets, duty of confidentiality on people to whom such trade secrets are disclosed during the litigation.

   (b). Procedural requirements of evidence law should also be revisited in order to provide effective protection for confidential information, especially in case of trade secrets. For example, in the very limited cases where parties may be obliged to produce documents containing trade secrets, a strict duty of

confidentiality should be applied to people to whom such trade secrets are disclosed during the litigation

vi. Strengthening Damages and Compensation

(a). The importance of creating a "damages culture" in India so as to effectively deter those involved in infringing and pirate activities must be recognized. In the immediate future, awareness must be created about:

- the impact of piracy, consequent losses to both the private sector and the government whether in the form of revenues or lost taxes and, in particular, the use of the proceeds of piracy to fund other criminal activities. Various amendments must be made to intellectual property statutes to ensure the law itself sufficiently deters potential and actual infringers from engaging in/continuing to engage in such activities. Towards this end such statutes should be accorded primacy over any other legislative constructs in order to ensure that pirates do not escape through interpretation routes and the conflict of laws. The award of sufficiently high damages would play an important role in deterring those who infringe the intellectual property rights of others, and as such, the statutes should mandate that statutory damages must be paid for the infringement of intellectual property rights. Damages should be calculated on the basis of a particular credible amount payable as damages as well as a deterrent in respect of each act of piracy or infringing copy of a protected work which is made or used by an infringer, and provisions should be introduced whereby damages are trebled in cases of willful, commercial or repeated infringement or piracy. The, statutory amendments should be made to have intellectual property disputes settled quickly, possibly through plea-bargaining and out-of-court settlements in the case of the criminal infringement of intellectual property rights.
- Amendments should be made to statutory law to allow for the compounding of offences across the board. In the case of copyright, for instance, neither the copyright statute nor the criminal procedure code enables the quashing of proceedings as a matter of right at the option of the copyright owner – on the contrary, quashing is entirely at the discretion of the court. If such quashing was statutorily available to copyright owners as a matter of right, it would make it much easier to bring cases of criminal copyright infringement to a logical conclusion.

(b). Statutory Damages: Where copyright owners choose to initiate civil proceedings in respect of the infringement of their intellectual property rights, even if they are successful in establishing that their rights have in fact been infringed, and even if the infringement has been conducted on a commercial scale, there is no guarantee that they would be awarded substantial damages. In fact, experience has shown that the damages awarded are often simply not high enough to act as a credible or viable deterrent to those engaged in the infringement of intellectual property rights. Due to this, statutory damages should be stipulated in the various intellectual property statutes so that such damages would automatically be awarded to the rights owner whenever infringement was proved. This is particularly important considering that: (1) the nature of infringement is generally clandestine and infringers ostensibly do not maintain accounts — consequently, actual damages are extremely difficult to either compute or prove; and (2) the proceeds of piracy, when piracy is conducted on a commercial scale, tend to be extremely high and are often used to fund organized crime — without credible mechanisms to deter those engaged in piracy (such as the award of high damages), there is little to disincentivize pirates from engaging in intellectual property infringement. It is therefore recommended that the Policy clearly recognise the importance of the award of statutory damages, and lay the foundation for the award of such damages being treated as a necessity to effectively deal with the infringement of intellectual property rights.

(c). Compoundability of Criminal Offences: As far as the criminal infringement of intellectual property rights is concerned, one of the impediments to the speedy resolution of disputes is the lack of provisions in intellectual property statutes which allow for the compounding of offences as a matter of right i.e. for rights owners to be able to choose to settle disputes out of court. Currently, rights owners generally have to approach the appropriate court for the quashing of proceedings. Such quashing is allowed at the discretion of the court and is not granted to copyright owners as a matter of right. For quashing to be so granted to copyright owners as a matter of right, and for offences to consequently be compoundable at the option of the relevant copyright owner, either the Criminal Procedure Code, 1973, or the relevant intellectual property statute would have to state that the criminal infringement of an intellectual property right was compoundable offence. It is recommended that, at the policy level itself, recognition be accorded to the fact that the

compounding of crimes involving infringement would make it much easier to speedily bring intellectual property disputes to their logical conclusion. As such, steps should be taken to allow for the quashing of proceedings at the option of the copyright owner regardless of the form of intellectual property which is the subject matter of the relevant dispute. This could, *inter alia,* be achieved through the enactment of amendments either to the Criminal Procedure Code or to the various intellectual property statutes, which amendments specifically state that courts shall quash proceedings at the option of copyright owners.

vii. Resolving the conflict of laws: India has a maze of laws that govern IP which often work at cross purposes and defeats the very object for which they were framed in the first place. While instances abound, one such illustration can be found in the broadcasting sector. The TRAI Act of 1997 was enacted primarily for telecommunication services which specifically excluded television broadcasting services as they were effectively a subject matter of the Copyright Act 1957. However by way of an executive notification in 2004 television broadcasting services were brought under the TRAI Act though as stated there is already a Copyright legislation in place that provides an efficacious framework and machinery to deal with television broadcast related issues. This resulted in several anomalies in that the entire narrative of the broadcasting industry began to be viewed from a telecommunication lens rather than from an IP perspective. Instead of the Copyright Board it was the TDSAT that began exercising jurisdiction in all broadcast related matters. Further, while the Copyright Act gave exclusivity for a limited number of years to the content owner including broadcasters, the TRAI Act however took away this valuable right by mandating non exclusivity based on principles that are essentially applicable to telecommunication services. Further television broadcasters are also precluded from discovering the optimal price for their content as they continue to be subjected to tariff ceilings prescribed by TRAI in this regard. It is to be noted that broadcasters in India are content owners or licensees who make available their content through transmission via satellite transponders. Their position is similar to film producers and licensees who make available their content via multiple delivery options - through cinema halls and multiplexes. Yet, while films continue to be governed under the Copyright Act, Television broadcast services continue to be administered through the TRAI Act. While it is understandable for telecommunications services that utilize public spectrum to come under a regulatory framework as envisioned under the TRAI Act, private television broadcast services on the other hand however do not utilize any public resources as pointed out by the Airwaves Judgment of the Supreme Court passed in 1995. The

broadcasting sector is thus yet to realize its full potential. In recent times many television broadcast networks like Imagine TV, Real TV, etc have had to close down and shut operations shortly after commencing operations. Most of the broadcasters like Neo Sports, NDTV, etc continue to be in the red. Contradiction and ambiguity of legislative constructs therefore should be resolved on a war footing. It should be explicitly clarified that in so far as any particular species of IPR is concerned, the parent Act governing such species of IPR shall have primacy and supremacy over any other legislation/statute;

viii. Identifying and recognizing the various forms of piracy and infringement including penalties thereof: Various IPs are subjected to different kinds of infringement, While the IT industry is faced with the endemic problem of pirate copies and unauthorized usage of software, the broadcast industry is plagued with lack of content protection measures, under declaration of subscriber base by unscrupulous cable operators owing to limited access provided by such operators to subscriber data, and rampant area transgression at the downstream by the cable sector besides value erosion through digital piracy. The Films sector is reeling under the challenge posed by cam cording, and digital piracy. The pharma industry is concerned with largescale infringement of their patents. There is thus an urgent need to identify and define these violations and infractions and also keep open the option of adding on to the list as technology and 'digital behavior' evolves. Penal consequences including the principles of levying and quantifying damages and cancelling entitlement and access should be formulated and dealt with at length.

3.6 Encourage ADR mechanisms

i. Develop support processes for ADR centers created by High Courts based on mediation and conciliation pathways.

ii. Incentivize litigants to mediation and conciliations processes by allowing of 100% court fee refund on successful conclusion of such a reference.

iii. For the purpose of providing a variety of dispute resolution methods concerning intellectual property, India should provide alternative mechanisms to parties. With this view various bar associations and IP attorneys may be consulted to have discussion on fields in which ADR could be utilized, such as valuation of intellectual property.

3.7 Harmonization of IP laws and compliance with Treaty obligations

Intellectual property crimes are not committed within specific jurisdictions; the operations of those engaged in intellectual property infringement often cross not only the borders of various states within the country but also international borders. As such, it is critical to promote cooperation between various enforcement agencies along with the harmonization of intellectual property enforcement systems and laws, both within the country and at the international level. Combating intellectual property crime at the international level, and harmonizing the various laws, could be achieved by:

a. Utilizing, subject to national interest, public policy, established exceptions to IPR, competition law policy and recognized treaty exceptions (Article 40 of TRIPS), the Free Trade Agreements (FTA) and Economic Partnership Agreements (EPA) being considered or entered into by India to create and enforce harmonized models to check Counterfeiting and Piracy;
b. Enhance intelligence sharing between enforcement agencies of different countries; and
c. Engaging in TRIPS compliant IP treatment in FTAs for identified goods and services.

In addition to this, creating mechanisms for collaborations between enforcement agencies and the sharing of data and in relation to multi-jurisdiction IP crimes would significantly contribute to facilitating the protection and enforcement of intellectual property rights. Such mechanisms should be administered by a national level body such as the proposed National Intellectual Property Enforcement Task Force, as detailed in Article 8.4 of this document

3.8 Implementing the long pending WIPO Broadcast Treaties and the 1996 WIPO Internet Treaties, IP protection in digital medium

It is essential that Indian Copyright law be updated to take into account the realities, opportunities and challenges brought about by the Internet and other digital platforms. The WIPO Broadcasting Treaty that is presently under consultations and the 1996 WIPO Internet Treaties represent important first steps for countries wishing to provide the necessary protections and incentives for right holders, and form a strong basis with which to stimulate the digital economy in India. The absence of updated protections calls into question the extent to which right holders are able to protect their rights in the online environment, which is a hurdle to ensuring a level playing field for those who wish to exploit the fruits of their creative and technical efforts. In particular, the law should explicitly reflect:

i) a technologically neutral right of communication to the public; and

ii) protections for digital rights management, which should include rules prohibiting their circumvention as well as trafficking in circumvention devices

3.9 Balance IP Rights with Public Policy, Public Interest & National Interest.

The NIPP must seek to secure a balance between IP Rights and certain core areas identified as part of the critical development / social welfare agenda in India. Areas such as climate change, biodiversity, food security, public health, availability of media and entertainment options, scope of public and private broadcasting, fair use, nature and extent of compulsory licensing - all of these must be comprehensively identified, and the right balance must be struck between IP protection and public policy. Dialogue and collaboration must be established between the major stakeholders: i.e. international organizations, government, industry and civil society. The government, in its decision making, must operate neutrally and objectively so that the rights of all stakeholders are adequately protected. There must be periodic assessment of the balance between public and private interests and no sector should be undermined. Further, even within the private sector, there should be no discrimination between various industry players, and there must be a concerted effort to ensure free competition;

There are ample instances of where such disbalances have led to unintended consequences. For example The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007 requires the broadcasting rights holders of sporting events of national importance to share their feed with the public broadcaster 'Doordarshan'. However the Act itself mandates that such shared feed of sporting events of national importance shall be carried by Doordarshan only in its terrestrial channel and in its own DTH platform. However the terrestrial channel of Doordarshan is also freely available to all private Cable and DTH operators in the country. As a result these private cable and DTH operators have very little incentives to negotiate a fair value with the broadcasting rights holder of such sporting events. The broadcast rights holders who have had to pay considerable sum of money to acquire the rights from the rights owners are thus precluded from effectively monetizing such rights as a result of which their ability to invest funds for acquiring further rights is considerably impaired. The debilitating effect this has had particularly in the area of sports broadcasting is already evident. Disney, who was one of the partners in ESPN - a leading sports broadcaster holding several rights to multiple sporting events, quit and made an exit from the Indian sports broadcasting arena after divesting its stake. Neo Sports, another leading sports broadcaster who had acquired an array of broadcasting rights of several sporting events of national importance is now on the brink of bankruptcy and searching for a strategic investor to whom it could divest its stake. These incidents do not portend

well for a country like India where such systemic dilution of IP is perpetuated by anachronistic legislative and statutory constructs. Soon there could be a situation where there would be no broadcast rights holders (of sporting events of national importance) left to share their feed with the public broadcaster, thereby resulting in the Indian viewer losing out on all such sporting events even though s\he may be willing to pay a fair value for watching such events.

The NIPP must seek to establishing dialogue and collaboration between major national stakeholders – international organizations, government, industry and civil society as a basis for policy generation and 'laws updating'. A national IP Policy review on the basis of the UK Gower's Review of IP laws is warranted to establish a national consensus and priority roadmap for IP Policy development. In all of this, the importance of the government's neutrality and objectivity in their decision making and balancing of IP rights with public policy is critical to ensure that IP Policy in India is not skewed towards any one or 'bloc' of stakeholders thus ensuring a truly national IP Policy compliant with India's Treaty obligations. In effect, a National IP Policy will also assist the nation in assessing and securing compliance with its International Treaty obligations.

3.10 Public Policy and Market Access

Technology innovation is best accomplished by a healthy, competitive and diverse marketplace that allows companies to develop and grow according to their own strengths and capabilities. In fact, the competition between different providers makes industry especially responsive in meeting the needs of consumers, and ultimately benefits consumers with greater choices and better pricing options.

Non-discriminatory procurement policies of organizations and Governments have a key role to play in maintaining the diversity that is essential to the growth of industry. On the other hand, preference policies stifle innovation that is essential to ensuring the growth of industry.

Government Policy should therefore not discriminate against any business model. In practice, a preference policy interferes with free competition in the market without necessarily bringing about the benefits that may be expected, such as cost savings, and the avoidance of vendor dependence. Further, from the perspective of consumers, preference policies artificially limit the choice of products that can best meet their needs in a cost-effective manner. Preference policies also prevent companies from competing on equal terms.

In the broadcasting sector for example, all broadcasters are required by TRAI to compulsorily share their channels with all operators and that too at

regulated prices. Further there are hardly any eligibility conditions for an operator to fulfill in order to acquire channel signals from broadcasters. As a result there are many more operators in India than there are broadcasters. Again with all operators having all channels there is hardly any differentiation in their respective offerings to their consumers unlike abroad where competition thrives on differentiated offering. While TRAI has mandated non exclusivity and price controls for the channels offered by broadcasters, it however has recommended that operators can have their own exclusive channels. Also the retail rates ie the rate paid by the ultimate viewer/subscriber to the operators have been kept at forbearance whereas rates charged by broadcasters to operators are subject to regulations. TRAI has made it compulsory for broadcasters to offer all their channels on ala carte and has banned multi broadcaster bouquets from being sold at the wholesale - thereby preventing a more diversified content offering from reaching the Indian viewers and resulting in operators charging a premium from individual broadcasters for carrying their channels in their respective platforms. All these have led to the formation of last mile monopolies within the cable sector - as identified by TRAI itself in one of its recent recommendations.

It is therefore important for organizations to preserve their ability to choose products and business clients on the basis of their merits. Preferential treatment granted to any particular organisation/company or class thereof based on either their business model, ownership or primary place of business has the potential to pre-empt this, and would, in fact, make it impossible to evaluate each instance of procurement on its own merits, taking into total consideration the specific needs, requirements and environment where the product is to be used.

Identifying core areas of public policy which are impacted by the IP rights Government should identify core areas of public policy such as climate changes, public health, biodiversity and food security and innovations in such areas should be encouraged and incentives may be provided to players in such areas to generate more innovative technology. For example technology which reduces carbon footprint should be encouraged and government should provide support for players to protect technology in such areas. However at the same time Government should also be well aware of needs of common public and should ensure that grant of IP rights should not lead to excessive increase of prices of goods such as medicines, food products etc.

3.11 Protection of Utility Models

For sometime now various groups have been arguing in favor of grant of Utility Models in India. According to WIPO a utility model is an exclusive right

granted for an invention, which allows the right holder to prevent others from commercially using the protected invention, without his authorization, for a limited period of time. In its basic definition, which may vary from one country (where such protection is available) to another, a utility model is similar to a patent. In fact, utility models are sometimes referred to as "petty patents" or "innovation patents." The main difference between utility models and patents is that utility models seek to protect incremental innovation and the process of the grant of rights is much quicker in the case of utility models in comparison to patents. Utility models could be used to protect incremental inventions taking place within several sectors of the Indian industry. Therefore before utility models are adopted as another form of IP protection, a study should be conducted to ascertain its effect on Indian industry and the purpose such right would serve. Any study would also need to take into account the experience of other jurisdictions granting utility models, particularly analyzing attempts made in certain sectors by right holders to entrench their monopoly over products through utility models and any negative effect on consumers of such products.

3.12 Protection of trade secrets

Among the various forms of intellectual property which do not currently enjoy statutory protection are trade secrets. Currently, although trade secrets may be protected through equity and contract law, there is no statute for their protection.

It must therefore be recognized that trade secrets are an important form of intellectual property belonging to organizations, and that provision must be made to accord statutory protection to them so that the law pertaining to trade secrets is clearly defined, and there are no doubts relating to their protection under Indian law.

While employment agreements, NDAs, security systems, contractual obligations, and the equitable doctrine of breach of confidentiality subsist of the generally available means for protecting any organization's confidential information and trade secrets, there is an urgent necessity for a specific trade secret law in India. India remains one of the few countries that do not have a codified trade secret law.

As innovative companies are increasingly relying on confidential/proprietary information to help create a business advantage, the lack of a predictable and recognizable trade secret regime prevents India from benefiting from the innovation – and concomitant investment – that would otherwise flow from having a globally harmonized trade secret law.

3.13 Review of Section 115, Trade Marks Act, 1999

The Trade Mark Act 1999 (TMA) came into effect from 15th September 2003. By this the Trade & Merchandise Act 1958 was repealed. TMA has been hailed as a progressive legislation. By joining Madrid Protocol India has enhanced the level of protection in respect of trade mark of Indian origin and become designated country as part of process of International registration of Trade Mark. This is an opportunity to drive "Made in India" products to consumers in different international markets.

While in the law relating to Copyrights, the offences are cognizable, under the TMA, the offences until the coming into effect of the new law were not cognizable. As you are aware, there is wide spread misuse of trademarks by way of infringement and passing off that results in enormous harm caused to domestic industry and genuine trademark proprietors who spend time, monies and effort to build the brand over a period of time.

Consequent to a reasonable demand of the domestic industry, the TMA made the trade mark offences cognizable. The industry's request was to make the offences under the TMA cognizable so that swift and effective action could be taken against infringers and counterfeiters. The industry had never anticipated that while doing so, the Government will impose an impractical requirement of taking a written opinion from the Trade Mark Registrar before the Police could take action against counterfeiters and infringers.

Relevant Provisions

The headings of the relevant sections that deal with this matter are reproduced below. In the interest of brevity; the entire section has not been reproduced:

Section 103: Penalty for applying false trademarks, trade descriptions etc.

Section 104: Penalty for selling goods or providing services to which false trade mark or false trade description is applied.

Section 105: Enhanced penalty on second and subsequent conviction
Section 115 Cognizance of certain offence and the powers of police official for search and seizure
(1)----------
(2) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try as offence under this Act
(3) The offences under section 103 or section 104 or section 105 shall be cognizable

(4) Any Police officer not below the rank of deputy superintendent of police or equivalent , may, if he is satisfied that any of the offences referred to in sub section (3) has been, is being, or likely to be, committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or thing involved in committing the offence, wherever,

found, and all the articles so seized shall, as soon as practicable, be produced before a Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be:
Provided that the police officer, before making any search and seizure shall obtain the opinion of the Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained
(5)----------

Rule 110 to the TMA lays the process for obtaining such an opinion.

Last 10 years Experience

Section 115 is in operation for last 10 years. It will be useful for the Government to get information on the number of criminal complaints that have been filed across the country ever since the offences were made cognizable. The requirement of getting an opinion from the Registrar is a non starter. If the counterfeiters and infringers have to be dealt with sternly and effectively, on a complaint, the Police should be acting expeditiously rather than waiting for the Registrar's office to provides an opinion in writing which will end in delay in action and the counterfeiters getting full opportunity to abscond.

In fact, some cases were being filed in the Courts before the offences were made cognizable. Based on the orders passed by the Courts to investigate, the Police was taking some action. With this change, virtually no action is being taken because of the requirement of seeking and obtaining a written opinion is an onerous one and affords time to the infringer to disappear. More often than not, such infringers operate in an unorganized manner and are able to wind up or abscond in short time. In such actions, time is of the essence.

This has reduced utility of the section and its efficacy due to hurdles in implementation. The provision is applicable to all goods and services including drugs, foods and all other categories. The provision is almost dormant in the statue. The whole purpose of making the offences under TMA cognizable have been rendered futile with the introduction of the proviso to section 115(4). On the one hand the offences have been made cognizable, and on the other an elaborate requirement of seeking an opinion from the Registrar of Trade Mark's is provided. It is still not widely used section or

provision among neither the right holders nor the Police.

The records in the office of the Registrar are not updated and the whole process gets delayed when targets, stocks, location in trade are moving in real time requiring swift action. Many times resources deployed for investigation by right holder go waste because of the need to comply with this provision.

The Registrar's inputs are limited to ownership of trade mark only and not on the content of the products since the Registrar has no testing facility.

In view of the above, given that ten years have passed since the law came into effect, this is the right time to review section 115. It is humbly requested for Government's consideration that the proviso to section 115(4) should be deleted from the TMA.

3.14 Identify Parallel Imports as a potential threat to the Economy and devise methods to combat the same

A parallel import is a non-counterfeit product imported from another country without the permission of the intellectual property owner. The parallel international trade in books and other copyrighted material is often understood as a grey-market trade that occurs through unofficial channels. Thus, while the goods themselves are genuine, the channels of trade are not the same as originally desired by the producers. In this context, the Standing Committee in its 2010 Report had suggested that a new proviso should be introduced in the proposed amendments stating, "provided that a copy of a work published in any country outside India, with the permission of the author of the work and imported from that country into India, shall not be deemed to be an infringing copy." The inclusion of this provision would have meant that books published in any country could be made freely available and sold in India without this amounting to an infringement of copyright. However, the proposed proviso was not inserted into the Copyright (Amendment) Act, 2012.

IMPACT OF PARALLEL IMPORTS

1. Import by trade directly drives valuable foreign exchange out of country. The very goods are available in domestic market with made in India Tag; reasonable restriction could improve the foreign exchange reserves position.
2. Such imports by traders is affecting the domestic industry which has set up huge manufacturing capacities in Industry at different locations including at backward places employing lakhs of persons directly or indirectly. There is fear of slowdown in economy.
3. Under guise of imports large quantities of counterfeit cosmetics

are getting imported knowingly or unknowingly that is impacting revenue plus health, wealth of consumers.

4. If goods are made and sold in overseas market by third person under identical name or IP right then it cannot be bought into India unless IP right holder in India consent to such use of trade mark or permits for whatever reason. World over different countries have different policy in line with its domestic legislation on the exhaustion of IP. Hon'ble Court in India like Bombay and Calcutta had granted interim orders preventing the importation of goods or deported the goods. Clarity on the position and procedure of trade must be made to assess stakeholders and industry in devising strategies.

HAZARDS TO CONSUMER

Trader's import goods at discount or in massive quantity or goods are close to expiry or best before date which then offloaded in Indian markets. Goods some time are poor quality or sold with mixed counterfeit goods affecting consumers that have no consumer helpline. Importer pays nominal duty and gets advantage on margins due to saving on other taxes that he plays in market. Examples- TV and Camera, mobile handsets, Laptops. Due to craze for imported goods among consumers some products are sold at rates higher than local products. The hazard is to health and loss to the economy, hence parallel imports must be given a special mention in the NIPP alongwith measures to curb and combat it.

3.15 Clearer Guidelines for grants of Compulsory Licenses

Novartis acknowledges that compulsory licenses are an integral element of the patent system. However, legitimate use of compulsory licenses can only occur as a last resort in order to address special situation that cannot be resolved, such as dependent patents or public policy problems requiring an extraordinary or urgent response. In the pharmaceutical sector, it is noted that lack of access to affordable medicines are in most cases not due to the existence of patents but caused by other factors such as a lack of universal healthcare coverage and the challenges of an underdeveloped infrastructure. The measure of requirements such as working, pricing and patient access need to be conducted with an understanding of the limitations and processes inherent to the pharmaceutical industry: with respect to launch timing, investment, training/education about a new drug and availability of physicians to patients.

The NIPP must endeavor to provide clear guidelines and conditions for legitimate use of compulsory licenses, thereby enhancing transparency in process.

In the case of copyright sector like broadcasting etc, compulsory licensing

should be an exception rather than a norm given that these are non essential public needs. The terms thereof should be determined by the Copyright Board rather than the TRAI or the TDSAT. In this regard, it is imperative that the Copyright Board is formed immediately as on the one hand the Copyright Act holds out a promise of timely and efficacious remedy yet the same has been rendered ever elusive owing to executive inaction in its formation.

3.16 Institutionalize Anti-Piracy measures

While anti-counterfeiting measures & jurisprudence have been innovative, systemic failures or institutional / statutory gaps continue to make anti-piracy efforts in India an uphill battle. Much of the gap arises from a lack of a statutory damages culture. With punitive damages remaining largely discretionary remedy civil litigation does not provide an adequate monetary deterrence. On the other hand criminal law remedy limited as it is to two species of IP (copyrights & trademarks) denies IP owners the ability to ensure IP rights are effectively protected. The cumbersome criminal law process and backlogs in courts is further compounded by allegations of corruption and disinterest. With advanced technical growth on the "infringing side" the state and consequently IP owners have struggled to keep up with piracy methods. The consequences, for instance, for contempt of court or perjury by defendants are slow in coming, if taken seriously at all that these do not provide an adequate level of deterrence to infringers. The lack of statutory damages provisions in the relevant IP statutes also further allows infringers (who do not mostly maintain accounts of any sort) to operate with near impunity.

Enforcement of IP laws in the context of piracy also remains fragmented in terms of procedure, practice and even in some states inclination leaving IP owners to cope with inefficient systems & processes as well as indeterminate results.

There are, of course, numerous mechanisms which may be employed so as to curb piracy. One of the most important of these is the promotion of public awareness of the perils of counterfeits and pirated products. This is of particular importance since there is very little awareness amongst the general public not only of the violation of intellectual property rights but also of the negative effects which are often associated with the use of pirated products. For example, the use of pirated software often involves increased vulnerability to cyber security threats as pirated software may contain *malware*.

The promotion of public awareness may be achieved by conducting campaigns in which the public and private sectors cooperate. Such campaigns

conducted under the PPP model would ensure that inputs are taken from all the players involved.

In addition to the above, a number of other measures could be taken such as:

a. Creating an National Anti-Piracy Cell ("NAP-C") under a central agency such as the Central Bureau of Investigation ("CBI") to track and interdict organized crime related piracy rings and acts as well as critically to interdict the flow of funds supporting piracy or realized from piracy; Setting up of centrally managed National Intellectual Property Enforcement Task Force (dealt with in Article 8.4 of this document) primarily dedicated to tracking, checking and preventing the counterfeiting and piracy of intellectual property;
b. Streamlining and improving of the border measures and regulators against infringement of intellectual property rights
c. Streamlining and improving of exiting border control measures against cross border ingress infringement of intellectual property rights allowing for support to the IP regime as well as contributing to the national exchequer in terms of the realization of tax monies;
d. Strengthening and implementation of domestic legislative regulations to check counterfeiting and piracy resulting in effective deterrence;
e. Widening the scope of existing special state based laws to combat all forms of piracy and counterfeiting to check criminal syndicates and anti-national elements, and enacting an analogous law at the central level;
f. Creating state based Anti-Piracy task force with cross district enforcement powers (much like the Special Investigation teams / Joint task Forces tasked with interdicting terror groups of organized crime) the State Police agencies to track and interdict organized crime related piracy rings;
g. Strengthening law enforcement anti-piracy procedures to prevent and enforce against software and other types of piracy and counterfeiting;
h. Creating a database of known counterfeiters and pirates to track their activities and behaviour patterns;
i. Conducting periodic industry-wise infringement surveys to assess impact and success.

The cumulative effect of taking such measures would be to seek to realistically reduce the levels of piracy and counterfeiting scene in India and, consequently, to support not only industry by protecting its intellectual property rights but also: (1) to reduce losses to the state Exchequer caused by the sale of illegal, pirated/counterfeit products; (2) to decrease funding to organized crime from the proceeds of sales of pirated/counterfeit products; (3) enable industry to further invest in the development of intellectual property as their revenues would be protected, and budget cuts would not

have been made in research and development.

Additionally, the recommendations included within the Report of the Committee on Anti-Piracy (2010), chaired by Ministry of Information & Broadcasting Secretary Mr. Uday Kumar Varma (and reiterated in Secretary Varma's March 14, 2011 FICCI Frames Keynote Address), should be implemented without further delay. These recommendations include:

a. A multi-media public relations campaign (to be included in the Five Year Plan), in which Government and private sector work in tandem to promote a concerted message anti-counterfeiting message to the public (which could include the costs and implications of counterfeiting and piracy);
b. The development of pamphlets and comic books, highlighting harmful effects of counterfeiting, developed jointly by industry and the Human Resource Development Ministry for free distribution in all schools, private or government;
c. The passage of legislation that targets counterfeiting at its source, such as anti-camcording legislation;

As the Government plays an important role as a purchaser and user of intellectual property products, procurement mechanisms should ensure that all government procured products respect intellectual property rights, to be an example for corporations and individuals.

Till the time broadcasting continues to be governed and administered by the TRAI and the TDSAT instead of applicable Copyright law, it is imperative that the TRAI Act recognizes the Copyright Act in order to avoid inconsistences in rule/regulation making and the TDSAT is also duly sensitized of the need for protecting copyright subsisting in the broadcast reproduction. Accordingly, operators who have been found to be pirates or infringers of television channels should be debarred from taking recourse to the Must Provide route. Further The TRAI regulations should be aligned to deal with piracy and therefore towards that end it should facilitate timely monitoring and detection of infringement activities and also time bound remedial measures to be undertaken. The present regulations require a 21 days' notice for disconnection to be given to operators who are known to be pirating signals or blatantly misusing the regulations for their self-interests. This is not an efficacious remedy. The notice period needs to be brought down to 48 hours more so in the case of live sporting events being broadcast.

3.17 Tackling infringements on the Internet-Strengthening regulatory frameworks.

In light of the size of the adverse impacts on the rights of copyright owners

and the entire economy, the GOI should strengthen the regulation of counterfeits and pirated copies that are sold on online auction sites on the Internet, by mutually extending necessary cooperation with those concerned, such as the administrators of those websites and the Internet service providers. To this end, it should also further expand means for collecting information on intellectual property infringements.

3.18 Tackling Jurisdictional Issues relating to Enforcement.

As far as the enforcement of intellectual property rights is concerned, there are a number of issues which rights owners face due to the lack of awareness relating to intellectual property rights, police teams not having the requisite training on how to conduct an action in cases of criminal infringement, and the police being severely undermanned and 'under-resourced'. While these are issues which the Policy is not oblivious to, it must be taken into account that among the issues confronting rights owners are also jurisdictional issues.

The jurisdiction of various enforcement agencies should be very clearly defined so that there is no ambiguity relating to whom / which agency or team should be approached by rights owners for the protection of their intellectual property rights. One glaring example of ambiguity in relation to jurisdiction is the lack of any delineation between intellectual property crime *committed off-line* and intellectual property crime *committed over the Internet.*

3.19 Encouraging The Exploitation Of Intellectual Property Rights

The NIPP should seek to ensure that the framework seeks to promote the commercial exploitation of IP as the key value creating activity essential to the development of an IP industry.

Effective exploitation of intellectual property is still the sore spot not only for universities but also for most companies in India. In today's economic environment intellectual property is not only a way to stay competitive but also to cash in and commercialize the same.

In order for **commercialization** to be successful, standards must be established for the disclosure of the creation of intellectual property, especially by employees of companies. This would enable companies to actually benefit from the creation of in-house intellectual property and to take appropriate steps for the protection of intellectual property rights immediately from the time that they arise.

In addition to this, business strategy, R&D strategy and intellectual property

strategy amongst companies and universities should be linked. This, along with the establishment of best practices on strategic use of patents, copyrights, designs and brands, would create synergies between all three functional areas leading to better utilization of resources and focused growth.

Similarly in areas such as GIs and designs the government must establish mechanisms for the commercial exploitation and value addition of protected GIs and designs. Traditional craftspeople engaged in the creation of this property must be sensitized to the needs of its protection and continued maintenance and should also be equipped with market intelligence to assist in its commercial exploitation. The promotion of **commercial exploitation** of IP will entail adopting the following strategies:

i) ***Link the NIPP to the national Innovation focus*** to ensure seamless synergy between the NInC efforts and those under the NIPP;

ii) ***Support Small & medium Industries*** (SMEs) involved in the commercial exploitation of IP in terms of training, funding and joint commercialization of IP- this will relate to the three way linkages established in educational institutions including management institutions allowing SME the ability to innovate, incubate and monetize IP assets; With regard to providing assistance to SMEs in relation to the commercialization of intellectual property, a variety of steps should be taken. At the initial stages itself, educational campaigns should be conducted to make SMEs aware of and familiar with the value of intellectual property rights to their business interests.

iii) Once this is done, ***training*** should be conducted so as ***to enable SMEs to understand how best to apply intellectual property*** in a strategic manner as a competitive tool. In addition to conducting such training, the use of intellectual property and its commercialization as an important part of business strategy by SMEs should be incentivized. One possible way in which to do so is to offer rewards to SMEs for the use of intellectual property (and the rights subsisting therein) as part of their business strategy.

iv) Simultaneously, steps should be taken to ***establish networks to share intellectual property*** in a manner which would not only result in information exchanges amongst various SMEs but in a manner which would also result in the forging of strong public-private partnerships. The establishment of cooperation between not just various SMEs but also between SMEs and other players would help to maximize the utilization of resources and thereby enhance the overall development of intellectual property within the country. Further, special consultation and facilitation centres at intellectual property offices should be set up specifically for the benefit of SMEs. This is because despite the fact that SMEs play an important role in the creation of intellectual property within the country, most SMEs are largely

unaware of the procedures (to protect their intellectual property) mandated by the law.

v) ***Identify existing state owned IP pool*** and adopted partnership models amongst institutions and Ministries to acquire, or enhance or unlock greater commercial value.;

vi) ***Create institutional policies aimed at identifying IP innovators*** and aim to nurture their development to maximize IP value acquisition.

vii) ***mandate R&D institutions*** and allow such institutions the ability to enter into PPP model based "incubation ventures" to nurture and commercialize valuable innovation

viii) Stimulate entrepreneurial activities focusing on exploitation of commercially viable IP.

ix) ***Incentivize transfer of technology*** in critical areas such as pharmaceuticals, renewable energy (solar, wind etc) to positively encourage differential pricing intended to benefit disadvantaged layers of society. The NIPP must introduce incentive-driven policy, such as tax reliefs, Statutory IP valuation & IP audits, to promote and incentivize creation, valuation and commercialization of IP assets by industry, including MSMES, academia, research institutions, innovators and creators. Make provision for suitable Government subsidies as well as reward system, which may increase IP creation and protection. Implement a system to provide pharmaceutical regulatory data protection to incentivize innovation and to ensure that newly marketed medicines are safe and effective. Introduce target and performance oriented policies for IP creation for government aided or assisted agencies and programs.

x) ***Facilitate Licensing Activities of Companies*** Licensing of IP assets must be encouraged. Further academic institutions must also be encouraged and a proper platform may be provided to such technology owners to showcase their technology and commercialize the same. The NIPP must also ensure that innovators license their technology at industry terms.

xi) ***Promoting exports and ventures in foreign markets***. Indian companies particularly SMEs need to be promoted and guided in order to enter foreign markets. However, before doing so, Indian companies need to be exposed to the practices and level of technology, which are prevalent in foreign countries. In order to achieve that, India should encourage more joint training exercises with various countries and should ensure that Indian talent pool gets opportunities to work on ongoing projects of scientific relevance. Further strong public private partnerships should be encouraged in order to maximize the utilization of resources and overall development of industry as well as universities.

xii) ***Sensitizing Players in relation to IP rights and its value***: Not only Government but even private players should sensitize their employees with the need of effective protection and commercialization of IP. Every company should be encouraged to have an IP policy in place which would work as a guiding tool to enable employees to understand the relevance of IP and how to maintain the same. Such IP policy should contain information relating to at least reporting, disclosure and do's and don'ts for relevant IP. The National IP policy should include an educational component to promote education of Indian students and the public about the value of IP rights, how IPRs may be obtained and exploited, and how IPRs promote growth and employment in India. This effort will help promote awareness and entrepreneurship, as well as respect for IP rights throughout society Not only Government but even private players should sensitize their employees with the need of effective protection and commercialization of IP. Every company should be encouraged to have an IP policy in place which would work as a guiding tool to employees in order to understand the relevance of IP and how to maintain the same. Such IP policy should contain information relating to at least reporting, disclosure and do's and don'ts for relevant IP.

xiii) ***Promotion and adoption of revenue sharing models*** depending upon nature of Intellectual Property. While primacy should be accorded to the freedom of contract, Government should device a scheme of revenue sharing in only those cases where the creator of IP does not have appropriate bargaining power. Further as the technology is developing new medium of communication and transmission are available which bring new challenges in terms of profit sharing between the owner and distributor of IP. In such cases Government should take expert advice on such matters and should at least suggest model compensation/ royalty sharing mechanism so that a creator of IP is aptly compensated for its work. The best way to ensure creators and innovators are rewarded is through effective enforcement of strong intellectual property protections – which allows the creators and inventors to capture the value that the market places on their innovations. In cases where there is strong evidence that existing models are not adequately compensating creators of IP the Government should take expert advice on such matters and suggest possible compensation/ royalty sharing mechanisms. Government could also ensure different stakeholders are aware of "best practices" by public research institutes, private sector, and corporate research departments.

xiv) ***Strengthening mechanism/incentives for transfer of technology*** With regard to the promotion of technology transfers and licensing

from universities and research institutes, the following measures should be instituted:

a. The expeditious enactment of the PFIP Bill;
b. The evangelization of sustainability opportunities for universities through licensing and technology transfers;
c. The promotion of a culture where institutions engage in research on cutting edge-technology leading to breakthrough solutions to existing problems through commercialization;
d. The facilitation of university exchange programs with other countries to share best practices in university licensing;
e. The conduct of training programs for university faculty members which focus on the complexities of licensing and the nuances of license negotiation;
f. The establishment of Technology Transfer offices in universities (TTOs); and
g. The recognition of successfully commercialized university technologies and their contribution to innovation and creativity, along with the grant of awards.

Research and academic institutions in India have been involved in research activities for a long time and have sufficient knowledge of the domain and have developed capabilities for engaging in various fields of research. However there has been considerable lack of direction for transforming this research into patents and making use of the patent system for possible commercialization through licensing and commercial partnership opportunities. The Government should adopt policies which incentivize the private sector to work with research and academic institutions in India to help these institutions to commercialize their innovations.

In addition, to encourage ongoing research in these institutions to transform into patents and further commercialization of the same, ongoing efforts of the Technology Information and Forecasting and Assessment Council (TIFAC) under the ministry of Science and Technology should be coordinated with other government ministries and bodies through the National IP Policy.

Research incentives can be provided to inventions that aim to use the IP system for technology dissemination. Further, incentive schemes already available to micro small and medium sized enterprises (MSMEs) for registration of patents can be enhanced so that marginal innovators of all sizes can benefit from the scheme. All such efforts need to be brought in sync with the National IP Policy.However in order for them to be commercially viable these organizations require incentives to make them commercially attractive for investment opportunities. In order to achieve this goal Government should adopt policies which incentivize these investments.

Government should adopt policies, consistent with international obligations, which attract technology transfers within India and encourage setting up of a manufacturing base within India including enhanced flow of foreign direct investments. A concerted policy in this regard particularly in high end technology products would not only enhance the development of industry but concurrently result in building of indigenous capacity

4. Implementation of the NIPP- Creating & sustaining a "Nodal Agency"

In order that the NIPP effectively provides and delivers a robust blueprint and actions effectively, the Policy, a National IP Council ("NIPC") reporting to the Prime Ministers Office should be established as the nodal agency tasked with:

a. creating a viable NIPP including after consultation with Industry bodies, eminent citizens and experts, political consultation;
b. creating stake holder buy in with the NIPP;
c. liaise with & advise key ministries & agencies to establish and secure cooperation towards achieving NIPP goals
d. work towards securing linkages between government, educational institutions, R&D institutions, management institutions and Industry in consultation with the NinC;
e. Monitoring and reporting on implementation of the NIPP
f. To monitor the implementation and execution of the IP Policy.
g. To commission research reports/papers/commentaries/fact sheets
h. To provide advisory and guidance to the Government and industry
i. To submit periodic progress report to the PMO and the Cabinet

The composition of the NIPC should be supported by 3 separate advisory councils tasked with achieving the three pronged NIPP goals crystallized in this document.

The NIPC should be chaired by the Prime Minister with day to day functioning entrusted to the Vice-Chairman who should be an eminent citizen with an impeccable record. The NIPC should further be staffed by Industry leaders, IP champions, and eminent IP lawyers etc to be selected from across industry by the PMO to comprise the NIPC.

Each advisory council should be staffed by eminent persons from a related field for instance Educationists, Scientists, lawyers and Industry Captains to ensure relevance and effective realization of NIPP goals.

4.1 The structure and composition of the members of NIPC.

- The NIPC should constitute of no more than 6-8 members.
- Industry leaders, IP champions, thinkers, researches etc to be selected from across industry by the PMO to the NIPC.
- NIPC to be headed by a Chairman, selected from amongst the Council.
- NIPC members to be appointed for a maximum period of 3 years with a possibility of an extension where required.

4.2 Current Status of Coordinated IP laws application

The enforcement of intellectual property is handled by the State police (local police or State crime branches), whose jurisdictions are extremely limited. In general, their jurisdiction extends only as far as city limits, except in the case of the Crime Branch, whose jurisdiction extends as far as the relevant state's boundaries. Beyond these jurisdictional limits, the powers of the police are extremely limited, except for Central Bureau of Investigation (CBI) which only undertakes the investigation of high-end crimes across the nation. Customs only check IP violations at the border and are currently building their capacity. Each of these enforcement agencies operates independently and there is no systematic and active coordination and collaboration between them to tackle IPR crimes, such as counterfeiting or piracy.

4.3 Concerns regarding Current Status

Infringements or crimes of counterfeiting and piracy are not limited by national or state boundaries, much less city limits. As such, operations which involve the manufacture, sale and distribution of pirated copies of works protected by trademark and copyright, whether they are films, music, books or computer programmes, generally operate across national and state borders. Due to jurisdictional issues, it is extremely difficult for any one police force to effectively pursue criminals throughout the entire chain of operations. It is for this reason; the enforcement of intellectual property rights requires and involves a great deal of coordination (and red tape) between the police forces of multiple states.

Further, IP violations and crimes are special types of crimes, under the family of economic offences, which require a very specialized skill set, capacity, man-power and domain knowledge among the enforcement agencies to undertake a comprehensive investigation, action and prosecution of IPR infringers. And, naturally, the lack of a single agency which could deal with intellectual property enforcement throughout the country is an obstacle in the efficient curtailment of counterfeiting and piracy.

This is of concern not just because of the implications of counterfeiting and piracy for rights owners but also because of the spectrum of adverse

consequences attendant to the infringement of intellectual property rights, which range from the funding of organized crime, cyber security issues, threats to human life and huge losses caused to the state exchequer.

Guidance on the conditions for issuing a preliminary injunction in cases of alleged patent infringement would be helpful. Also a comparison of how Courts view (1) patent or copyright infringement and the conditions required for the grant of a preliminary injunction and (2) trademark infringement and the conditions required for the grant of preliminary injunctions would be very interesting. Experience shows that often the Courts will seek to maintain the status quo. For example, where an infringing party such as a generic company has launched, it is more difficult to have preliminary relief granted to prevent further infringement of the patent rights (without considering, at least in depth, the assessment of irreparable harm). In another example, where a generic company has not yet launched on the Indian market but is asserted to infringe a patent by manufacturing for export, the Courts may be inclined to grant a preliminary injunction to prevent local launch but not order the generic company to refrain from the infringing act of manufacture and export. Experience from other jurisdictions indicate to us that the Court should issue a preliminary injunction to cease or prevent patent infringement if a party seeking the preliminary injunction demonstrates: (1) that there is a substantial likelihood of success on the merits of the case; (2) that the party faces a substantial threat of irreparable harm if the injunction is not granted; and (3) that the balance of harms weighs in favor of the party seeking the preliminary injunction. Guidance on this issue would be beneficial for the Courts and the parties involved. In the case of broadcasting also it has been found that there is a reluctance on the part of TDSAT in granting preliminary injunctions to cease or prevent copyright infringement of broadcast rights, while disconnection notices issued by broadcasters against defaulting operators are promptly stayed citing viewer inconvenience.

4.4 National IP Enforcement Taskforce.

Establish a central coordinating mechanism to guide all enforcement agencies and efforts by setting up of National IP task Force on the lines of the US Department of justice-Intellectual Property Task Force. A National IP Enforcement Taskforce would ensure that the protection of intellectual property rights could be undertaken:

(a) in a systematic, coordinated and efficient manner throughout the country by a single agency which was not restricted by jurisdictional issues; and
(b) by a single agency which had a clear overview of the entire chain of inter-state operations of the organizations engaged in piracy and

counterfeiting.

While dealing with intellectual property enforcement at the national level, the taskforce would also be able to create a detailed national database relating to persons and entities engaged in piracy; currently, as there is no single agency which operates across the country, information relating to piracy resides piecemeal with various state police forces, and, at a practical level, it is virtually impossible to correlate this information or to develop a comprehensive understanding of the functioning of organizations which are engaged in piracy, as they operate across state borders.

Further, a National IP Enforcement Taskforce would have the ability to not only deal with the protection of IP at a national level but also to act as a single point of contact in the international sphere. Having the necessary data and the jurisdiction to combat piracy nationwide, it would be able to coordinate with foreign and international agencies to facilitate and ensure the protection of intellectual property, and combat piracy, at an international level.

As such, a National Level dedicated IPR Enforcement Task Force, which could act as one unit, having member representatives from all enforcement agencies must be formed. As one unit, the Task Force will not only have very clear goals and vision but it will be very convenient to build capacity of such task force by way of PPP activities and collaboration. Since it will be a multi-member task force, evidence collection, generation of intelligence and seamless and standard enforcement process on a national level will go a long way in systematically controlling counterfeiting and piracy.

4.5 Implementing Agencies

The Policy, as stated above, contemplates the creation of a National Intellectual Property Council as an implementing agency. In addition to this, it is also important that there be formed, at the national level, an intellectual property enforcement task-force which would be capable of combating, and would have the jurisdiction to combat, intellectual property crime across the country.

Currently, enforcement is primarily handled by a number of different state police forces and by the customs, all of which work relatively independently without there being any coordination by a central overarching enforcement agency. The existing enforcement agencies all have extremely limited jurisdiction and, with the exception of the CBI which may become involved in certain high-profile cases, there is no agency which deals with violations of intellectual property rights at the national level.

This is of particular concern considering that the operations of those engaged in intellectual property crime are, nowadays, rarely restricted to a single state. In fact, in a number of instances, it has been observed that far from being restricted to a single state within a country, intellectual property criminal operations now cross international borders.

In addition to this, data relating to intellectual property crime exists in disparate fragments with the various enforcement agencies, and there is no countrywide database containing information or records of intellectual property crime.

As such, if a national intellectual property enforcement task force were to be constituted, it would not only be able to help combat intellectual property crime across state borders within the country but could also coordinate with foreign and international enforcement agencies specializing in combating intellectual property crime.

Further, the constitution of a national intellectual property enforcement task force would facilitate the creation of a database at the national level, which would not only help to track the operations of those engaged in intellectual property crime but would also enable an accurate picture to be drawn of the proliferation of commercial piracy and other forms of intellectual property infringement in India.