Response to the Draft National IPR Strategy Prepared by the Sectoral Innovation Council on IPR

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Date: 31.10.2012

Sub: Response to the Draft National IPR Strategy Prepared by the Sectoral Innovation Council on IPR

Dear Sir,

It is heartening to see the Draft National IPR Strategy out for consultation. This indeed is a step in the right direction and the efforts on all concerned and the sincerity of the government of India needs to be commended. We work on IPR issues with small and micro-entrepreneurs (mainly in FMCG, Hospitality, Infrastructure, Information Technology and Entertainment sectors) and think it appropriate to submit our reflections to you for consideration.

The document put up for consultation is extensive in its coverage. It may further be enriched by including policy dimensions that are very closely connected with IPR protection debate. For example, law relating to data protection. The issue becomes even more important in view of the disclosures made to regulators. Also, the working of the law relating to confidential commercial information in real life scenario is quite pertinent in view of the draft document recognising that MSMEs have the bulk of their IPRs in local knowledge and work practices “embedded within broader managerial practices”. A critical look at the business method patent might be needed to extract some beneficial elements for incorporating into the current IPR framework in India.

The National IPR Strategy also needs to better articulate the national position on protection of traditional knowledge and innovations emerging out of that repository. Issues of benefit sharing will also need to be recognised and addressed so that this does not blow up into a controversy on inter-cultural and inter-generational equity.

Internationally, the impact of IPRs on the conservation of cultures and diverse knowledge systems is considered important. In fact, we have a culture and heritage industry that brings us both revenues as well as national pride. More attention ought to be focussed on issues emanating from the impact of IPRs in these sectors.
All these issues closely connect with the international human rights discourse, and therefore, a human rights impact of the IPR strategy ought to be studied and stated.

IT sector is an important sector for the Indian economy and the impact of IPR strategy of the nation on the “start-up” need to be further evaluated. For instance, free lance IT professionals and SMEs contribute to the development of the open source software. This is mostly done under the GNU licence. This has no doubt created a huge repository of common source software, but some provisions of the GNU licence allow harvesting of this publicly created platform for exclusive use by layering modifications and/ or combinations on the open source software and reserving the resultant for exclusive use. A hard look on the commercial fairness from a national strategy point of view is needed in this area. Similarly, Control over data being served in and out of the country, by way of physical location of the data centres have been in the eye of recent controversies and need to be reckoned at the IPR strategy level.

Issues relating to protection of IPRs of small software exporters and their limited bargaining strengths in retaining the “up-side” of the IPR they create for others need to be better addressed as well. On the other hand, protection of IPRs of out-sourcing firms and employers also need to be strengthened, so that parties are held to their bargains effectively. Enforcement of “non-compete clauses” and “confidentiality/ non-disclosure agreements” are key areas that will need to be revisited.

We also believe that a greater involvement of the Ministry of Consumer Affairs in this debate will be fruitful. Thoughts must be given to setting up of regulatory mechanisms similar to the Office of Fair Trading to investigate and remedy situations where IPRs are used in aid of “unfair trade” and to the detriment of the end consumer.

As most MSMEs operate in the local markets and MSME contribute to the 50% of the industrial production of India, the capacity building needs at the grassroots level is well emphasised in the strategy document. We would like to add to this that capacity building must encompass legal professionals at the mufassil level, who are or will be the real soldiers on the actual frontline of the IPR enforcement struggle.

Further, the government may like to consider encouraging initiatives that critically evaluate decisions of the High Courts on IPR matters. Most critiques of legal positions today are based on Supreme Court Cases, where too few matters reach and often too late. Also, there is a tendency of IPR matters to be “settled” rather than decided. This leaves an important information gap for non-actors in the individual disputes to evaluate the state of the legal position. Ways and means to bridge this gap also need to be incorporated in the Strategy document.

On another note, the consultation exercise would have a better credibility if more democratic institutions were involved in it. Perhaps, a second round of consultation where Panchayat Raj bodies are made aware of the core issues that are covered by the strategy and their impact upon the daily lives of the citizen could be carried out. Feedback on that basis would lend both robustness and credibility to the National IPR Strategy. This is perhaps more relevant in relation to protection of farmers’ and plant breeders’ rights and traditional knowledge. Also, the strategy paper should be supplemented by empirical data so that a meaningful debate could take place and those who have difficulty in digging out data could also meaningfully participate in the debate around this issue of ever increasing importance and possibly inter-generational impact.

Last but not the least, a comprehensive evaluation framework needs to be crystallised for evaluating the access to “justice: social, political and economic” to the people of India.
The comments above are by way of a very high level review and we will be more than happy to partner with the department in further strengthening the policy document and fleshing out the details of the strategy.

We have responded with the faith that this high level document to guide the legislative and executive agenda in the field of IPR will promote holistic policy making in the very important filed. We hope that our comments will be taken on board and we also look forward to the next version of the National IPR Strategy.

Many Thanks.

Regards.

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