

**COMMENTS ON THE**  
**PROPOSED INTELLECTUAL PROPERTY RIGHTS POLICY TO THE**  
**DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION**  
**BY THE CENTRE FOR INTERNET AND SOCIETY**

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**I. PRELIMINARY**

- I.1. This submission presents comments from the Centre for Internet and Society (“**CIS**”)<sup>1</sup> on the proposed National Intellectual Property Rights Policy (“**National IPR policy**”) to the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India. (“**DIPP**”).
- I.2. CIS commends the DIPP for this initiative, and appreciates the opportunity to provide comments on the National IPR Policy. CIS’ comments are as stated hereafter.

**II. PRINCIPLES**

- II.1.1. The characterization of intellectual property rights may be two- fold- *first*, at their core, intellectual property rights, are temporary monopolies granted to *inter alia*, authors and inventors; and *second*, they are a tool to ensure innovation, social, scientific and cultural progress and further access to knowledge. This dual nature and purpose of intellectual property protection is particularly critical in developing economies such as India. Excessive intellectual property protection could result in stunted innovation and negatively impact various stakeholders.<sup>2</sup> It is therefore our submission that the development of the IPR Policy be informed by broader principles of fairness and equity, balancing intellectual property protections with limitations and exceptions/user rights such as those for research, education and access to medicines.
- II.1.2. These comments will evaluate the recent developments in the intellectual property regime in India and point out instances for possible reform.

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<sup>1</sup>[www.cis-india.org](http://www.cis-india.org) (Last Accessed: 30/11/14).

<sup>2</sup>The Washington Declaration on Intellectual Property and Public Interest concluded after the Global Congress on Intellectual property and Public Interest in August 2011 attended by over 180 experts from 32 countries articulate this position perfectly. Available at: <http://infojustice.org/wp-content/uploads/2011/09/Washington-Declaration.pdf> (Last Accessed:29/11/14)

II.1.3. These comments have been divided into five sections, dealing with patents, openness, open access to scholarly works, copyright, and negotiating free trade agreements in that order.

### III. DETAILED COMMENTS

#### III.1. Patents

##### III.1.1. Key Issues Regarding Patents

III.1.1.1. The key issues involving patents in India include compulsory licensing, uncertainty in software patenting, slow pace of examination of patent applications, *inter alia*.

III.1.1.2. CIS submits that the Indian intellectual property regime contains numerous safeguards to ensure that monopolies of intellectual property are not exercised to the detriment of the public and that the National IPR Policy should continue to reflect these ideals.

##### III.1.2. Software Patents and Dual Monopoly

III.1.2.1. Presently, software in India may be copyrighted and computer related inventions are patentable. CIS is of the opinion that this results in an ambiguity that could potentially result in a dual monopoly over the same subject matter. This ambiguity around the legality of software patents and the scope of patents on computer related inventions has existed since the Parliament introduced the term “per se” to section 3(k) through the Patent (Amendment) Act, 2002, persisting despite repeated attempts<sup>3</sup> to bring about clarity in the law (the most recent one being the Draft Guidelines on Computer Related Inventions, released in 2013 by the Indian patent office).

III.1.2.2. CIS believes that software is currently adequately protected under copyright, and does not merit patent protection. The software industry in its infancy grew by leaps and bounds in the absence of patents, and imposing twenty year monopolies is stunting the development of software, especially, in an industry where technology changes every two to five years.

III.1.2.3. Therefore, CIS is of the opinion that the National IPR Policy should recognise the danger of software patenting, and encourage the adoption of and development

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<sup>3</sup>Shashank Singh, Guidelines for Examination of Computer Related Inventions: Mapping the Stakeholders’ Response, Available at: <http://cis-india.org/a2k/blogs/guidelines-for-examination-of-computer-related-inventions> (Last Accessed: 30/11/14).

of alternatives to a strict intellectual property regime, for instance, Free/Open Source/Libre Software.

### **III.1.3. Compulsory Licensing of Patents**

III.1.3.1. CIS believes that the current regime allowing for compulsory licensing of patents in India helps achieve a balance between the two concerns of rewarding inventions and making them available to the public during times of need, of the rights of the patent holder with his obligations to ensure availability of products at a reasonable price by allowing third parties who do not own the patent to license the use of the patent during the term of protection.<sup>4</sup> CIS believes that such a balance cannot be arrived at merely by market mechanisms. CIS further believes that achieving such a balance is important for a developing country like India as we have special concerns regarding access to healthcare and access to technologies that will protect our national interest.<sup>5</sup>

III.1.3.2. Therefore CIS submits that the National IPR policy should continue to make positive allowances for government involvement in this space, through the compulsory licensing of patents in certain situations.

### **III.1.4. Alternative Licensing Mechanisms**

III.1.4.1. CIS believes that government participation in the patenting regime ensures that all interests are taken on board and the social costs of patents are kept in mind. CIS is of the opinion that the National IPR policy should be formed after careful consideration of alternative patent licensing mechanisms that could help achieve a balance between the interests of different stakeholders particularly because as a developing economy we have greater needs for access to medicines and technologies to ensure economic development.<sup>6</sup>

III.1.4.2. On patent pools: In the interests of ensuring development of technology and innovation while balancing the social costs of patents, CIS submits that the National IPR Policy should consider alternative licensing mechanisms such as patent pools

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<sup>4</sup>N.S. Gopalakrishnan, Compulsory License Under Indian Patent Law, MPI Studies on Intellectual Property and Competition Law, Vol.22, 2015, pp.11-42.

<sup>5</sup>Raadhika Gupta, Compulsory Licensing under TRIPS: How Far it Addresses Public Health Concerns in Developing Nations, Journal of Intellectual Property Rights, Vol.15, September 2010, pp.357-363. Available at: [http://nopr.niscair.res.in/bitstream/123456789/10211/1/JIPR%2015\(5\)%20357-363.pdf](http://nopr.niscair.res.in/bitstream/123456789/10211/1/JIPR%2015(5)%20357-363.pdf) (Last Accessed: 30/11/14).

<sup>6</sup>Id.

which present an efficient legal arrangement to the different problems that arise when companies have complementary intellectual property rights and these rights are essential to new technologies being used and employed<sup>7</sup>. Such a licensing could be done with government participation to ensure standard royalty rates and standard agreements.

III.1.4.3. On tailoring patent strengths: Our patent system provides for a one size first all approach to patent terms. CIS believes that the National IPR Policy could suggest the adoption of a more studied approach to differential patent strengths that properly balances out the benefits of the innovation against social costs of patents both in the form of monopoly pricing and threats to subsequent pricing is required to ensure that our patent system is fair equitable and in our national interest.<sup>8</sup>

III.1.4.4. On royalty caps: CIS believes that the National IPR policy could encourage bringing back royalty caps for certain sectors as a means of regulating the market and ensuring that access to technologies is unharmed. CIS believes that this will serve the larger national interest and ensure technological development.<sup>9</sup>

## III.2. OPENNESS

### III.2.1. Free and Open Source Software

III.2.1.1. Free and Open Source Software (“FOSS”) has emerged as a key agent in information technology policy making in India. There has been an increased importance of free and open source software in education, governmental agencies, as recently demonstrated by the Indian Government's decision to shift to open source software, in sync with the Digital India initiative.<sup>10</sup>

III.2.1.2. CIS believes that the IPR policy should encourage free and open software in education, governmental agencies etc. CIS believes that this shift in open source

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<sup>7</sup>Nehaa Chaudhari, Pervasive Technologies: Patent Pools, Available at: <http://cis-india.org/a2k/blogs/patent-pools> (Last Accessed: 30/11/14).

<sup>8</sup>One of the measures along which we could have differential patent strengths could be the time for the invention to reach the market, see, Benjamin N Roin, The case for Tailoring Patent Awards Based on the Time-to-Market of Inventions, UCLA Law Review, Vol.61, 2013, Available at: <http://dash.harvard.edu/bitstream/handle/1/10612849/Case%20for%20Tailoring%20Patent%20Awards%203-15-13.pdf?sequence=1> (Last Accessed: 30/11/14).

<sup>9</sup>Sunil Abraham, Patented Games, Available at: <http://cis-india.org/a2k/patented-games> (Last Accessed: 30/11/14).

<sup>10</sup>See Nabi Hasan, Issues and Challenges in Open Source Software Environment with Special Reference to India, Available at: [http://crl.du.ac.in/ical09/papers/index\\_files/ical-43\\_144\\_317\\_1\\_RV.pdf](http://crl.du.ac.in/ical09/papers/index_files/ical-43_144_317_1_RV.pdf) (Last Accessed: 30/11/14).

software is necessary to keep our IPR policy in sync with developments in the digital world.

### **III.3. OPEN ACCESS TO SCHOLARLY WORKS**

#### **III.3.1. Open Access Policies and Scientific and Scholarly Works**

III.3.1.1. The benefits of implementing an open access policy with regard to scientific and scholarly works are manifold. Providing open access to scholarly research will ensure percolation of cutting edge research into the society. It has been often argued that restricted access to government funded research is unethical, since scientific research conducted by government agencies is partly, if not entirely, funded by the taxpayers' money.

#### **III.3.1.2. Government Initiatives Towards Open Access**

III.3.1.2.1. CIS believes that the steps taken in this regard by the Department of Biotechnology and Department of Science to make scientific research publicly available by developing an open access policy are laudable, especially from the view of increasing access to research undertaken at these institutions.

III.3.1.2.2. There are several other government agencies which have implemented open access policies, namely, the Council of Scientific and Industrial Research, Indian Council of Agricultural Research and Institute of Mathematical Sciences. CIS believes that this is step in the right direction

III.3.1.2.3. Copyright is the key instrument to effect open access policies. CIS believes that the work should be appropriately copyrighted to allow for free and open access to any interested person.

### **III.4. COPYRIGHT**

#### **III.4.1. Exceptions for Fair Dealings**

III.4.1.1. The 2012, Amendment Act extended fair dealing exceptions in several ways; to sound recordings, videos, to the making of three dimensional works from two dimensional works,<sup>11</sup> to storing of electronic copies at non-commercial public libraries,<sup>12</sup> to rights of commercial rental.<sup>13</sup> While the Act touched upon some of the burning issues with regard to limitations and exceptions to copyright, CIS

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<sup>11</sup>Section 52(1), the Copyright (Amendment) Act, 2012.

<sup>12</sup>Section 52(1) (n), the Copyright (Amendment) Act, 2012.

<sup>13</sup>Zakir Thomas, Overview of Changes to the Indian Copyright Law, Journal of Intellectual Property Rights, Vo.17, July 2012, pp.324-334.

believes that it did miss out on laying down clear rules for issues like exceptions for educational institutions, libraries and archives which is currently being negotiated at the standing committee of the WIPO as an international instrument,<sup>14</sup> parallel importation of books for non-commercial libraries, and extending the current exceptions for education to distance education and digital education. CIS is of the opinion that while this was a step in the right direction the IPR policy should continue the trend of extending exceptions for fair dealing and should encourage forming general guidelines for fair dealings as it would help achieve goals of education and scientific and cultural progress.

III.4.1.2. CIS believes that it would be beneficial if general guidelines for fair dealing were provided for. These guidelines must not take away from existing fair dealing exceptions under the law, but should act as a framework to understand what constitutes fair dealing. CIS submits that this coupled with support for the International Treaty for Limitations and Exceptions for Libraries and Archives<sup>15</sup> and for International Treaty for Limitations and Exceptions for Educational and Research Institutions<sup>16</sup> would help serve national interest as it would help reduce the freezing effect by reducing the costs of using copyrighted work legitimately and ensure social and cultural progress. CIS submits that the National IPR policy should encourage the international instruments aimed at providing for exceptions and limitations for fair dealings.

### **III.4.2. Exceptions for Government Produced Works**

III.4.2.1. CIS believes that the current exceptions for use of government produced works are far too limited and taxpayers must be free to use the works that they have paid for.<sup>17</sup> CIS submits that the National IPR policy should encourage the broadening of

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<sup>14</sup>See conclusions of the chair at the 23<sup>rd</sup> session of the Standing Committee on Copyright and Related Rights at the WIPO, Available at: <http://www.eifl.net/wipo-sccr23-conclusions> (Last Accessed: 30/11/14).

<sup>15</sup>For draft proposal of the treaty see IFLA, Treaty proposal on Limitations and Exceptions for Libraries and Archives, Available at: [http://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_27/sccr\\_27\\_2\\_rev.pdf](http://www.wipo.int/edocs/mdocs/copyright/en/sccr_27/sccr_27_2_rev.pdf) (Last Accessed: 30/11/14).

<sup>16</sup>See The Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives, proposal by the African Group (document SCCR/22/12). Available at: [http://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_22/sccr\\_22\\_12.pdf](http://www.wipo.int/edocs/mdocs/copyright/en/sccr_22/sccr_22_12.pdf) (Last Accessed: 30/11/14).

<sup>17</sup>See Section 52(q) of the Copyright Act, 1957.

exceptions with regard to government produced works.

### **III.4.3. Compulsory Licensing**

III.4.3.1. The Act allowed for compulsory licensing of foreign works<sup>18</sup> and put in place statutory licenses for broadcasters<sup>19</sup> CIS believes that this was a positive step that will encourage cultural and scientific education in India. CIS submits that compulsory licenses for copyrighted works help achieve goals of education, of scientific and cultural progress. CIS submits that the National IPR policy should encourage compulsory licensing of copyrighted works in certain situations for the promotion of access to knowledge and information.

### **III.4.4. Protection of Authors/ Performers Rights**

III.4.4.1. The Act allowed for protection of author's rights regarding storing of their work in electronic medium<sup>20</sup> and for protection of rights of performers both commercial<sup>21</sup> and moral.<sup>22</sup> CIS believes that while this is in itself a positive step, there is need to ensure that such moral rights are not abused by authors or rights holders to stop discourse or to stop fair use and adequate measures to ensure the same must be put in place to avoid excessive intellectual property rights. CIS submits that the National IPR policy should discuss limitations to moral rights of authors and performers to make room for fair dealings.

### **III.4.5. Users Rights Regarding Cover Versions Of Songs**

III.4.5.1. The Act allows for users to make cover versions of a sound recording required provided they comply with rules regarding notices and royalties. CIS believes that this is potentially problematic as even recording companies have acknowledged that the non-commercial cover versions help in increasing the popularity of the original and therefore help in the growth of the film and music industry and this new law could possibly stop individuals from making such cover versions due to fear of violating the law and therefore harm the film and music industry. Therefore, CIS

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<sup>18</sup>Section 31 and 31A, the Copyright (Amendment) Act, 2012.

<sup>19</sup>Section 31D, the Copyright (Amendment) Act, 2012.

<sup>20</sup>Section 14(1), the Copyright (Amendment) Act, 2012.

<sup>21</sup>Id.

<sup>22</sup>Section 38B, the Copyright (Amendment) Act, 2012.

believes that the National IPR policy should consider measures to provide more rights to the users in order to ensure development of the music and film industry; CIS believes that this is an instance of excessive intellectual property and is harmful to all stakeholders involved.

#### **III.4.6. Relinquishment of Copyright and Creative Commons**

III.4.6.1. The amended Section 21 of the Act now only requires a simply public notice from the author to relinquish his copyright as opposed to an application to the registrar of copyrights. CIS believes that this is a positive step as now the requirement under the rules can easily be satisfied by using a Creative Commons Zero license.<sup>23</sup> CIS submits that the National IPR policy should undertake similar steps to encourage the usage of creative commons licenses and thereby facilitate access to knowledge.

#### **III.4.7. Term of Protection of Copyrights**

III.4.7.1. The Act provided for an extension of term of copyright for photographs to almost double its earlier duration,<sup>24</sup> CIS believes that this is possibly harmful as it could lead to copyrighted works not entering the public domain for unnecessarily long periods of time and thereby harm progress in science and culture. In this regard CIS further believes that since the term of protections provided under our copyright law for all works extends beyond our international obligations, The National IPR policy should try to ensure that scientific and cultural development are not hindered by excessive terms of protection that go beyond the minimum owed under our international obligations.

#### **III.4.8. Protection Of Rights Management Information**

III.4.8.1. The amendment Act provided for protection of rights management information (RMI) and provided for both criminal and civil remedies in instances of unauthorised alteration or removal of RMIs.<sup>25</sup> CIS believes that these provisions are

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<sup>23</sup>CIS, Comments on Draft Copyright Rules, 2012, available at: <http://cis-india.org/a2k/feedback-to-draft-copyright-rules-2012> (Last Accessed: 29/11/14).

<sup>24</sup>See Pranesh Prakash, Analysis of the Copyright (Amendment) Bill, 2012, Available at: <http://cis-india.org/a2k/blogs/analysis-copyright-amendment-bill-2012>

<sup>25</sup>Section 65B, The Copyright (Amendment) Act, 2012.

unnecessary as India does not have obligations to do so under international treaties and there is no actual demand for these rights as it is yet unclear how these rights help authors or performers. CIS submits that these provisions increase the costs for users who want to legitimately break these digital locks to obtain accessible formats for the information and that so long as the rights holder does not have an obligation to ensure that their works are accessible, provisions such as these cripple creativity and stunt industry growth.<sup>26</sup> Therefore CIS submits that the National IPR policy should help achieve a balance of concerns of users who want to legitimately break these digital locks on the one hand and the need to prevent digital piracy on the other.

### **III.4.9. Intermediary Liability**

III.4.9.1. CIS submits that due to the IT (Intermediary Guidelines) Rules, 2011, there is a freezing effect on free speech on the internet as these rules are procedurally flawed and go against the principles of natural justice.<sup>27</sup> CIS believes that such a restraint on free speech harms creativity and innovation, to this end CIS submits that the National IPR policy should ensure free speech is not unfairly hindered by rules regarding copyright infringement.

### **III.4.10. Criminalization of Copyright Infringement**

III.4.10.1. Individual non-commercial infringement of copyright is a crime under Section 63A of the Copyright Act<sup>28</sup> and is punishable by imprisonment which can extend to three years or a fine that can extend up to rs. 2,00,000/- CIS believes that this is an instance of excessive intellectual property protection; CIS is of the opinion that the civil remedies available for copyright enforcement are enough for copyright protection and that the criminal remedies under the Copyright Act, 1957 function only to ensure that there are obstacles to free and legitimate use of copyrighted material. CIS believes that such provisions are harmful for innovation within India

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<sup>26</sup>Pranesh Prakash, Technological Protection Measures in the Copyright (Amendment) Bill, 2010, Available at: <http://cis-india.org/a2k/blogs/tpm-copyright-amendment> (Last Accessed: 29/11/14).

<sup>27</sup>Rishabh Dara, Intermediary Liability in India: Chilling Effects on Free Expression on the Internet, 2011, Available at: <http://cis-india.org/internet-governance/intermediary-liability-in-india.pdf> (Last Accessed: 30/11/14).

<sup>28</sup>Section 63A, Copyright Act 1957.

and impose unnecessary costs on users.<sup>29</sup> Therefore CIS believes the National IPR policy should reconsider the question of criminalisation of copyright infringement and should ensure that any penal consequences are proportional to the act committed.

### **III.4.11. Concluding Remarks on Copyrights**

III.4.11.1. In conclusion while India has what some call the most balanced approach to intellectual property law in the world today,<sup>30</sup> one that balances both the interests of the author and the copyrights holder as well as the end user and the overall public interest, there is room for improvement as far as adapting to the internet age is concerned, especially considering the easy appeal of forming an intellectual property regime that is excessive and in the end harms all the concerned stakeholders.

## **III.5. FREE TRADE AGREEMENTS (FTAs)**

### **III.5.1. Need for Transparency Regarding FTA Negotiations**

III.5.1.1. India has lately been negotiating Free Trade Agreements with several developed nations, these are closed door negotiations and the texts of the meetings are not available to the public. CIS believes that these texts should be made available to the public to ensure transparency and to ensure all stakeholders know of any developments, CIS believes that public knowledge of the positions of various actors in any negotiation process will help ensure that such positions are taken keeping in mind the interests of all stakeholders and will ensure that any outcome from such negotiations will be in national interest.<sup>31</sup> CIS therefore submits that the National

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<sup>29</sup>See Right to Share: Principles on Freedom of Expression and Copyright in the Digital Age, Article19, Available at: <http://www.article19.org/resources.php/resource/3716/en/> (Last Accessed: 29/11/14).

<sup>30</sup>V Premanath, S Sivaram, Intellectual Property Systems in India: Progressing towards Greater Maturity and Diversity, Available at: <http://iimahd.ernet.in/users/anilg/files/Articles/Emerging%20IPR%20Consciousness,%20vikalpa.pdf> (Last Accessed: 29/11/14).

<sup>31</sup>Jan Wouters, Idesbald Goddeeris, Bregt Natens etc, Some Critical Issues in the EU –India Free Trade Agreement Negotiation, Working Paper No.102, KU Leuven Centre for Global Governance Studies, [https://ghum.kuleuven.be/ggs/publications/working\\_papers/new\\_series/wp101-110/wp102-wouters-goddeeris-natens.pdf](https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp101-110/wp102-wouters-goddeeris-natens.pdf), February 2013, p.16.

IPR policy should encourage transparency with regards to negotiations for free trade agreements.

### III.5.2. FTAs with Developed Nations and TRIPS Plus Standards

III.5.2.1. Leaked drafts of the European Union- India FTA negotiations have revealed that provisions on intellectual property protection were extensive and affected the pharmaceuticals sector, these provisions, if agreed upon, could go well beyond India's obligations under the WTO and under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. In fact, developed countries including the US<sup>32</sup> and EU<sup>33</sup> have tried time again and again to encourage developing countries to adopt standards of IP protection in bilateral or regional trade investment agreements that go beyond TRIPS<sup>34</sup>

India has repeatedly indicated to the WTO that it was not willing to commit to an agreement beyond TRIPS.<sup>35</sup> These commitments could include data exclusivity protection measures, ever-greening of patents etc.<sup>36</sup>

CIS believes that despite the growing pressure from developed nations regarding various FTAs,<sup>37</sup> India must hold its ground and ensure that concerns about India's national interest and the difference in the development levels of the European Union or other developed countries and developing countries like India are kept in mind while negotiating obligations under international agreements. Therefore CIS

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Monika Ermert, Lack of Transparency in EU-India FTA Talks Spurs Requests for Halt, ip-watch, Available at: <http://www.ip-watch.org/2010/09/03/lack-of-transparency-in-eu-india-fta-talks-spurs-requests-for-halt/>.

<sup>32</sup>The current policy of the US Trade Representative is seen to be reflected in the 2002 Trade Act available here: <http://www.gpo.gov/fdsys/pkg/BILLS-107hr3009enr/pdf/BILLS-107hr3009enr.pdf> See HR3009.

<sup>33</sup>The current trade strategy for the EU can be found here [http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc\\_152643.pdf](http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152643.pdf).

<sup>34</sup>Commission on Intellectual Property Rights, Integrating Intellectual Property Rights and Development Policy, Available at: [http://www.iprcommission.org/papers/pdfs/final\\_report/ciprfullfinal.pdf](http://www.iprcommission.org/papers/pdfs/final_report/ciprfullfinal.pdf), p.174.

<sup>35</sup>C. Correa, 'Negotiation of a Free Trade Agreement European Union-India: Will India Accept Trips-Plus Protection?', (2009) Oxfam Deutschland and Evangelischer Entwicklungsdienst Analysis, [http://www.oxfam.de/files/20090609\\_negotiationofafreetradeaggrementeuindia\\_218kb.pdf](http://www.oxfam.de/files/20090609_negotiationofafreetradeaggrementeuindia_218kb.pdf).

<sup>36</sup>S. Sharma, 'the EU-India FTA: Critical Considerations in a Time of Crisis', (2009) Centad Working Paper.

<sup>37</sup>Asit Ranjan Mishra, India to negotiate FTAs with emerging market nations, Livemint, Available at: <http://www.livemint.com/Politics/RIJNxUXovjNVaRzQt9KXmO/India-to-negotiate-FTAs-with-emerging-market-nations.html>.

believes that the National IPR policy should ensure that TRIPS plus standards are not acceptable to India as they will undermine our national interest and hinder development at the national level.<sup>38</sup>

### III.5.3. Shift from Multilateral Forums to Bilateral FTA negotiations

III.5.3.1. CIS believes that the trend of shift in negotiations from a multilateral forum such as the WIPO or the WTO to a bilateral or a regional forum<sup>39</sup> is harmful as certain flexibilities are built into the TRIPS and therefore multilateral negotiations based on TRIPS will help pursue India's interests better. And therefore when possible, India must prefer negotiations at multilateral forums as opposed to bilateral or regional treaties, CIS believes that the National IPR policy should reflect the same preferences.<sup>40</sup>

## IV. CONCLUDING OBSERVATIONS

IV.1. On patents, CIS submits that the National IPR policy reconsider software patenting, that encourage open source software, continue and strengthen that compulsory licensing and consider and study alternative licensing mechanisms as means to achieve a balancing of the interests of different stakeholders.

IV.2. On openness, CIS submits that the IPR policy should encourage free and open software in education, governmental agencies etc.

IV.3. On open access to scholarly work, CIS commends the work done by government agencies so far and submits that the IPR policy should encourage open access to scholarly works.

IV.4. On copyright, CIS submits that the IPR policy work toward strengthening and extending fair dealings provisions, supporting international instruments that strengthen fair dealing, encourage compulsory licensing. CIS submits that the IPR policy should

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<sup>38</sup>Sisule F Musungu and Graham Dutfield, Commission Multilateral Agreements and a TRIPS –Plus Word: the World Intellectual Property Organisation (WIPO), Available at: [http://www.iprsonline.org/ictsd/docs/WIPO\\_Musungu\\_Dutfield.pdf](http://www.iprsonline.org/ictsd/docs/WIPO_Musungu_Dutfield.pdf).

<sup>39</sup>For Trends, See Beginda Pakpahan, Deadlock in the WTO: What is next? Available at: [http://www.wto.org/english/forums\\_e/public\\_forum12\\_e/art\\_pf12\\_e/art19.htm](http://www.wto.org/english/forums_e/public_forum12_e/art_pf12_e/art19.htm).

<sup>40</sup>See Amit Sengupta, Do not trade away our lives, Vo.9, No.2, Indian Journal of Medical Ethics, 2012, Available at: <http://www.issuesinmedicalethics.org/index.php/ijme/article/view/88/1047>.

work towards ensuring that protections for copyright such as terms of protection, intermediary liability, protection of rights management information, criminalisation of copyright infringement etc., do not harm other legitimate interests of users or unnecessarily restrict free speech.

IV.5. On FTAs, CIS submits that the IPR policy encourage transparency with regard to FTA negotiations, ensure that TRIPS plus standards are not accepted as they would harm national interest and to encourage multilateral negotiations over bilateral free trade agreements.

IV.6. CIS welcomes the initiative of the DIPP to form a National IPR policy, CIS believes that it is essential that such an IPR policy avoid excessive intellectual property rights protection and is formed keeping in mind goals of development and national interest.

IV.7. CIS is thankful to the DIPP for the opportunity to provide comments on the National IPR policy and would be privileged to work with the government on this and other matters in these areas.

Pranesh Prakash  
Director

Nehaa Chaudhari  
Programme Officer

Anubha Sinha  
Programme Officer

Amulya P.  
Intern