

Comments on the Draft National Policy on Software Products

by

Centre for Internet & Society, India

I. PRELIMINARY

1. This submission presents comments by the Centre for Internet and Society, India (“**CIS**”) on the Draft National Policy on Software Products¹(“**draft policy**”), released by the Ministry of Electronics & Information Technology (“**MeitY**”).
2. CIS commends MeitY on its initiative to present a draft policy, and is thankful for the opportunity to put forth its views in this public consultation period.
3. This submission is divided into three main parts. The first part, ‘Preliminary’, introduces the document; the second part, ‘About CIS’, is an overview of the organization; and, the third part contains the comments by CIS on the Draft National Policy on Software Products.

II. ABOUT CIS

4. CIS is a non-profit organisation² that undertakes interdisciplinary research on internet and digital technologies from policy and academic perspectives. The areas of focus include digital accessibility for persons with diverse abilities, access to knowledge, intellectual property rights, openness (including open data, free and open source software, open standards, open access, open educational resources, and open video), internet governance, telecommunication reform, freedom of speech and expression, intermediary liability, digital privacy, and cybersecurity.
5. CIS values the fundamental principles of justice, equality, freedom and economic development. This submission is consistent with CIS' commitment to these values, the safeguarding of general public interest and the protection of India's national interest at the international level. Accordingly, the comments in this submission aim to further these principles.

¹ National Policy on Software Products (2016, Draft internal v1. 15) available at http://meity.gov.in/sites/upload_files/dit/files/National%20Policy%20on%20Software%20Products.pdf

² See The Centre for Internet and Society, available at <http://cis-india.org> for details of the organization, and our work.

III. COMMENTS ON THE DRAFT NATIONAL POLICY ON SOFTWARE PRODUCTS

General Comments:

1. CIS commends MeitY on its initiative to develop a consolidated National Policy on Software Products. We believe that there are certain salient points in the draft policy that deserve particular appreciation for being in the interest of all stakeholders, especially the public. An indicative list of such points include -
 - a. A focus on aiding digital inclusion via software, especially in the fields of finance, education and healthcare.
 - b. The recognition of the need for openness and application of open data principles in the private and public sector.
 - c. Identifying the need for diversification of the information technology sector into regions outside the developed cities in India.
 - d. Identifying the need for innovation and original research in emerging fields such as Internet of Things and Big Data.

2. We observe that the draft policy weighs in the favour of creating a thriving digital economy, which indeed is a commendable objective per se. However, there are certain aspects which remain to be addressed by the draft policy, to ensure that the growth of our domestic software industry truly achieves the vision set out in Digital India for better delivery of government services and maximisation of the public interest.

We submit that the proposed policy should include certain additional guiding principles to direct creation of software and its end-utilisation. These principles would ensure responsible, inclusive, judicious and secure software product life cycle by all the relevant stakeholders, including the industry, the government and especially the public. An indicative list of such principles that we believe should be explicitly included in the policy are:

- a. Ensuring that internationally accepted principles of privacy are followed in software development and utilisation, including public awareness.
- b. Requiring basic yet sufficient standards of information security to ensure protection of user data at all stages of the software product life cycle.
- c. Enforcing lingual diversity in software to allow for India's diverse population to operate indigenous software in an inclusive manner.

- d. Mandating minimum standards on accessibility in software creation, procurement and implementation to ensure sustainable use by the differently-abled.
- e. Focusing on transparency & accountability in software procurement for all public funded projects.
- f. Implementing the utilisation of Free and Open Source Software (“**FOSS**”) in the execution of public funded projects as per the mandate of the Policy on Adoption of Open Source Software for Government of India; thereby incentivising the creation of FOSS for use in both private and public sector.
- g. For software to be truly inclusive of the goals of Digital India, it is essential that to provide supports to Indic languages and scripts without yielding an inferior experience or results for the end user in non-English interfaces. Software already deployed should be translated and localised.

The inclusion of these principles in substantive clauses of the policy will go a long way in ensuring the sustainable and transparent growth of domestic software product ecosystem.

Specific Comments:

1. Development of a robust Electronic Payment Infrastructure

CIS observes that clauses 5.4 and 6.7 of the draft policy aim to establish a seamless electronic payment infrastructure. We submit that an electronic payment infrastructure should be designed with strong standards of information security, privacy and inclusivity (both accessibility and lingual).

We recommend that the policy mandate minimum standards of information security, privacy and inclusivity in all payment systems across private and public sectors. The policy should, therefore, ideally specify the respective standards for these categories, for instance ISO 27001 and National Policy on Universal Electronics Accessibility³, alongside other industry standards for Electronic Payment Infrastructure.

³ See

http://meity.gov.in/sites/upload_files/dit/files/Accessible-format-National%20Policy%20on%20Universal%20Electronics.pdf

2. Government Procurement

CIS observes that clause 6.1 of the draft policy seeks to develop a framework for inclusion of Indian software in government procurement. It is commendable that the draft policy identifies the need for a better framework. CIS notes that the existing procurement procedure allows for usage of Indian software. In fact, the Government e-Marketplace(eGM) already has begun to incorporate some of these principles in general procurement.

Indeed, the presence of a transparent and accountable government procurement, which leverages technology and the internet, is key to ensuring a sustainable and fair market. CIS recommends that the policy refer to these guiding principles to enable the development of a viable cache of Indian software products by creating more avenues, including government procurement.

3. Incentives for Digital India oriented software

CIS observes that clause 6.3 of the draft policy incentivises the creation of software addressing the action pillars of the commendable Digital India programme.

For development of superior quality software which will ensure excellent success of the Digital India programme, CIS recommends that the incentives should be provided *contingent* to the incorporation of certain minimum standards of software development. Such products and services should, *inter alia*, adhere to the stipulations under National Policy on Universal Electronics Accessibility, the Guidelines for Indian Government Websites, Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011, etc. In the process, the software should be subjected to reviews by a neutral entity to gauge the compliance with the abovementioned minimum standards.

4. Increasing adoption of Open APIs and Open Data

CIS observes that clause 6.6 of the draft policy promotes the use of open APIs and open data in development of e-government services.

We strongly recommend that open APIs and open data principles be adopted by software used in all government organizations, and non-commercial software . Open Data and Open APIs can serve a vital role in ensuring transparent, accountable and efficient governance, which can be leveraged in a major way within the policy by the public and civil society.

5. Creation of Enabling Environment for Innovation, R&D, and IP creation and protection.

CIS observes that clause 8.1 of the draft policy seeks to create an enabling environment for innovation, R&D, and IP creation and protection.

CIS submits that the existing TRIPS-compliant Indian intellectual property law regime is adequately designed to incentivise creativity and innovation in the area of software development. The Indian Patents Act, 1970 read with the Guidelines for Examination of Computer Related Inventions, 2016 do not permit the patenting of *computer programmes per se*. Several Indian software developers, notably small and medium sized development companies have made evidence-based submissions to the government previously on the negative impact of software patenting on software innovation.⁴

CIS recommends that the proposed policy re-affirm the adequacy of the Indian intellectual property regime to protect software development, in compliance with the TRIPS Agreement.

IV. CONCLUSION

CIS commends the MeitY on the development of the draft policy. We strongly urge MeitY to address the issues highlighted above, especially emphasising the incorporation of essential principles such as information security, privacy, accessibility, etc. Adoption of such measures will ensure a fair balance between commercial growth of domestic software industry and the maximisation of public interest.

Submitted on behalf of Centre for Internet and Society, India
2016

9th December,

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⁴ See

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