

Agreement on Trade -related Aspects of Intellectual Property Rights (TRIPS) and Nepalese Context

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Intellectual Property — The Basics

Intellectual Property

What it is?

- Creation of Mind
 - Artistic or Copyright: Books, Movies, Paintings, Music, Photographs, Software etc

- Commercial – Industrial Property : Patents, Industrial design, Trade mark, Trade secret etc.

Why IP Protection?

- To promote creative work
- To provide incentive to creator/owner/right holder
- Motivate right holders and others for further creation
- Global demand
- International trade
- Consumer welfare

Rational of IP Protection

- Financial
- Economic growth
- Social (consumer protection, public health, Moral.)
- International obligation (commitments)
- Promote creative work (scientific, technological, innovative and other creation of mind.)

Benefits of IP Protection

- US example:
 - 72% more value added per employee
 - 2/3rd of value of Large business is from intangible assets
- Example of Developing World
 - India, China, Japan, South Korea, Vietnam, Malaysia

TRIPS

Basic Principles

- Promote International Trade
- Reduce Distortions and Impediments
- Standard Provision of Intellectual Property
- Avoid differences in National Legal System
- Settlement of Disputes
- Rules to control Counterfeit

Recognizes

- IP as Private Right
- Flexibility to LDC's
- Multilateral Procedures to reduce tension
- Relationship between WTO and WIPO

Provisions

- Members shall implement the provision
- But not obliged if national law not contravene
- National treatment
- MFN treatment

Terms of Protection

- Copyright – 50 years from publication
- Trademarks – 7 years and renewable indefinitely
- Industrial design – 10 years
- Patent – 20 years from filing date
- Layout design – 10 years from filing date

Intellectual Property

- Copyright and Related risks
- Trademarks
- Geographical Indications
- Industrial Designs
- Patents
- Integrated Circuits/ Layout Design

Enforcement of IP

- General Obligation
- Civil and Administrative Procedures
- Compensate the losses
- Border measures

Other Provisions

- Acquisition and Maintenance
- Dispute Settlement
- Transitional Arrangement – one year from WTO agreement force
- Review and Amendment
- Security Exceptions

LDC

- Apply TRIPS provision - 1 to 10 years
- May accord extension
- Developed countries to promote technology transfer

Institutional Arrangement

- Council for TRIPS
- International Co-operation

Present Scenario of Nepal

Status of Nepal

- Concept recognized
- Value of land and other tangible assets vs. IPR
- Join WTO, WIPO and other treaties
- Patent, Design and Trademark Act, 1965
- Copyright Act, 2002 for artistic and literary works
- Enforcement Status

➤ Institutions

Department of Industries/ Office of Copyright
Registrar

Status of Nepal (...continued)

- Long History Poor performance
- No effective promotion/no specific policy
- 30000 trademark,72 design,67 patent
- No use/Under use/misuse
- No attorneys/No examiners
- Poor institutional capacity
- Comprehensive industrial property act in process

What needs to be done ?

- Improve Legal Base (pressurize for modern law)
- Create Information system
- Legal Counsel
- Enforcement Forum
- Cost Sharing
- Social responsibility

Who are Responsible?

- Regulatory Bodies (DOI/OCR)
- Enforcement agencies (Police, Customs and Tax Authority, Public prosecutor)
- Right Holders
- Civil Societies
- Consumer societies
- Lawyers
- Judiciary

IP Protection for Survival

- 21st century – Century of Science, Technology, Invention and Innovation
- Globalization
- Rule based Trade under WTO Umbrella
- Economic Growth, Social Justice
- Consumer Protection
- Base for future

Thank You All