



National Intellectual Property Rights Policy

Analysis in the light of inclusive innovation

Risk consulting

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Introduction

The centre of wealth creation has witnessed significant changes over the past few decades from tangible to intangible assets or as rightly coined by the Organisation for Economic Co-operation and Development (OECD), 'knowledge based capital'¹. As India emerges to be one of the fastest growing economies in the world, the time is ripe to leverage the country's knowledge-based assets to achieve inclusive and sustainable economic growth.

The National Intellectual Property Rights (IPR) policy² (the policy) released by the Government of India on 12 May 2016 is the first of its kind in India which encapsulates the critical role of Intellectual Property (IP) as a custodian to transform knowledge into intellectual assets. Additionally, the policy also provides for IPs enhanced role as a competition regulator, a marketable financial asset as well as an economic tool.

Through this publication, KPMG in India attempts to provide a point of view on the potential impact of the policy on various stakeholders. It does not in any way attempt to analyse the existing legislative framework or any international agreements.

The analysis has been carried out in light of other government policies and initiatives, such as 'Make in India', 'Digital India', 'Skill India', 'Start-up India' and any other programmes anticipated in the future.

The policy acknowledges the growing importance of intellectual assets in the current knowledge economy. Keeping this in mind, the policy has identified three principal stakeholders – public/private enterprises, educational and research institutes and Micro, Small and Medium Enterprises (MSMEs)/start-ups to build a multidimensional innovation ecosystem.

Snapshot of the policy

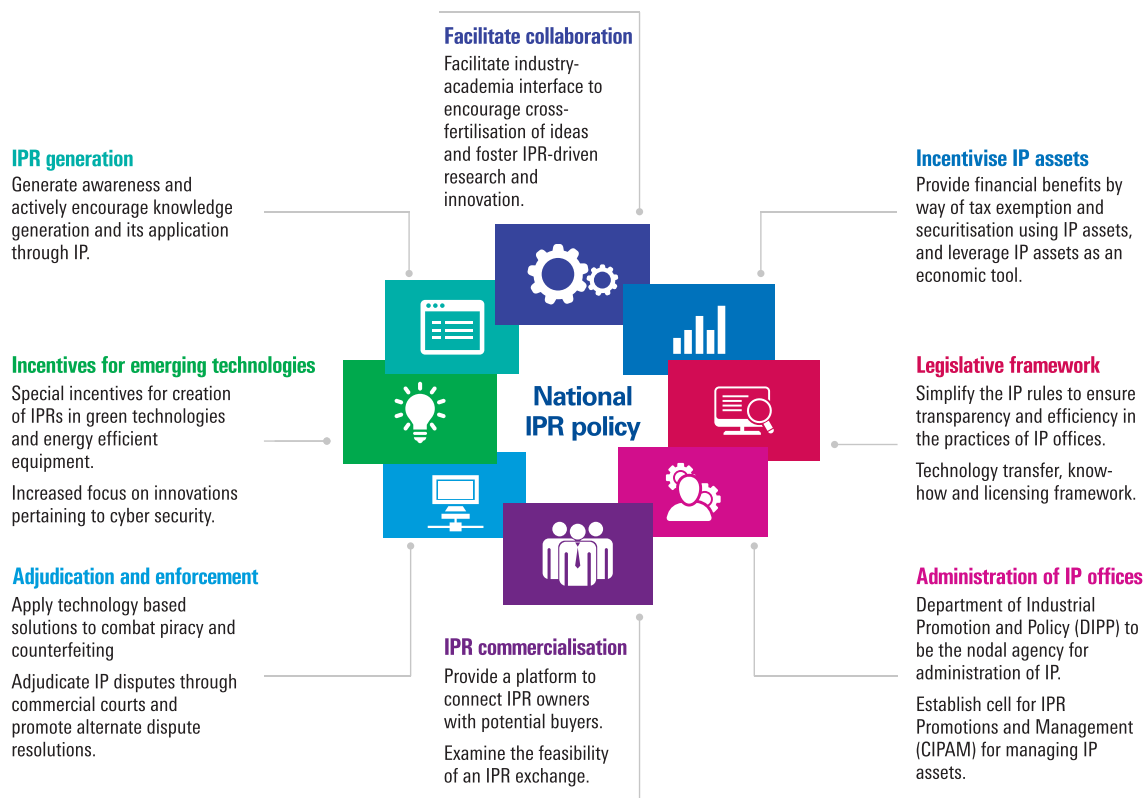
Although India has a significant knowledge base, a large part of it remains unprotected due to the lack of awareness about intellectual property legislations. The policy attempts to create an innovation ecosystem which can potentially transform knowledge into protectable and tradable 'intellectual assets'.

In its vision statement, the policy³ necessitates the transformation of knowledge into an intellectual asset to accelerate economic development and to make further advancements in science and technology, and arts and culture, thereby facilitating knowledge dissemination.

Further, the policy also realises the need to develop a dynamic, vibrant and balanced IPR system that can spur innovation and creativity, foster entrepreneurship, enhance socio-economic and cultural development and incentivise innovation in emerging technologies.

The policy has enunciated multiple action items which can propel generation, protection, and commercialisation of intellectual assets. Based on our analysis, some of the critical action items as envisaged in the policy are provided in the illustration below.

Focus areas of National Intellectual Property Rights Policy



Source: KPMG in India's analysis, 2016

1. OECD on New Sources of Growth: Knowledge-based capital: Key Analyses and Policy Conclusions - Synthesis report, OECD, 2013

2. Intellectual Property Rights: New policy may power R&D, national growth, New Indian Express, published on 17 May 2016

3. The policy document is available in the website of DIPP; URL : http://dipp.gov.in/English/Schemes/Intellectual_Property_Rights/National_IPR_Policy_12.05.2016.pdf (accessed on 8 June 2016)

Key takeaways from the policy



Although the legislative framework on protection of IP is compliant with the Trade-Related Aspects of Intellectual Property Rights (TRIPS) regime, the policy has attempted to provide a cohesive road map, covering the wide-ranging aspects of the IP value chain i.e. from IPR generation to commercialisation. In this regard, the policy has attempted to promote a holistic road map which shall enable the stakeholders to realise the full potential of IP.

Building innovation capacity



Besides acknowledging the growing importance of intellectual assets in the knowledge economy, the policy attempts to foster innovation between the aforementioned stakeholders on research areas of national importance (such as agriculture, pharmaceuticals, biotechnology, and information and communication technology (ICT).

Appreciating the value of intangibles



In a number of advanced economies, contribution of the knowledge based capital towards the national economy has increased manifold than the physical capital. According to a report published by the U.S. Department of Commerce in 2012, IP-intensive industries directly contributed to 34.8 per cent of the U.S. GDP (approximately USD5.06 trillion) and generated approximately 40 million jobs⁴.

The policy aims to bring in a paradigm shift on the perception of IP as it aims to foster an IP culture, which is likely to enable innovators to realise the commercial potential of IPRs, thereby facilitating wealth creation, knowledge dissemination, employment opportunities and business development.

Enforcement of IPRs



The policy seeks to address the issue of the enforcement of IPRs, presently thought of as a formidable challenge by Indian as well as foreign enterprises. Although the legislative framework provides adequate legal remedies by way of injunctions and penal and pecuniary damages, the lack of a coherent enforcement mechanism has resulted in widespread availability of counterfeit products. According to a FICCI-CASCADE report⁵, the total loss of revenue to the government due to the sale of counterfeit products was pegged at approximately USD6 billion in Financial Year (FY) 2013-14. The policy seeks to usher in multiple reforms in the enforcement framework to combat the sale of counterfeit products.

Administration of IPR



The policy acknowledges the importance of maintaining a predictable and an efficient IPR regime and attempts to streamline the processes. Some of the measures provided by the policy include:

- Modernisation and standardisation of infrastructure of IP offices
- Enhancement of transparency and efficiency in the enforcement of IPRs
- Establishment of DIPP as a nodal agency to streamline processes and ensuring improved services to users
- Establishment of a cell for IPR Promotion and Management (CIPAM) to facilitate promotion, creation and commercialisation of IP assets
- Improvement in the adjudicatory mechanism to combat IPR infringements.

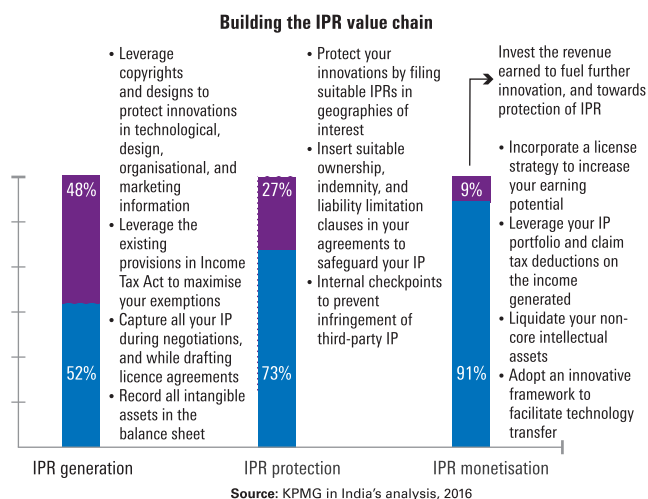
Our point of view



The IPR Policy rightly identifies the growing importance of IP in a knowledge economy and also aims to address several IPR challenges during the generation, protection and commercialisation stages of IP. To this end, it also attempts to address the anomalies in the existing framework and has taken significant measures to balance the interests of individuals' rights with the public interest. The policy may be used as a springboard by stakeholders to take proactive measures to transform their innovation capabilities.

It is critical for the government to provide a suitable legislative and regulatory framework which could allow stakeholders to secure their intellectual assets. From the vantage point of the identified stakeholders, generation of IP is expected to only make their glasses half-full and a thorough control framework which allows them to further protect and realise the commercial potential of their innovation, is likely to complete the picture.

An illustration of building the IPR value chain is provided below:



4. Intellectual property and the U.S. economy: Industries in Focus, U.S. Department of Commerce, March 2012, http://www.uspto.gov/sites/default/files/news/publications/IP_Report_March_2012.pdf
5. Illicit trade leading to alarming revenue loss: FICCI-CASCADE report, The Hindu, published on 15 October 2015

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