

NATIONAL IPR POLICY SERIES: RTI REQUESTS BY CIS TO DIPP + DIPP RESPONSES

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In earlier blog posts, we have discussed the [development of India's National IPR Policy](#) ("**the Policy**"); [comments by the Centre for Internet and Society \("CIS"\) to the IPR Think Tank before the release of the first draft of the Policy](#) and [CIS' comments to the IPR Think Tank in response to the first draft of the Policy](#). Continuing our National IPR Policy Series, this article documents our requests to the Department of Industrial Policy and Promotion ("**DIPP**" / "**the Department**") under the Right to Information ("**RTI**") Act, 2005 and the responses of the Department.

DETAILS OF RTI REQUESTS FILED BY CIS

In February, 2015, [CIS had filed three RTI requests](#) with the DIPP. [The first request](#) was four-pronged, seeking information related to *first*, the process followed by the Department in the creation of the IPR Think Tank; *second*, details and documents of a meeting held to constitute the Think Tank; *third*, details and documents of all/multiple meetings held to constitute the Think Tank; *fourth*, details of a directive/directives received from any other Government Ministry/authority directing the constitution of the Think Tank and *fifth*, the process of shortlisting the members of the Think Tank by the DIPP.

[In our second RTI request](#), *first*, we requested details of the process followed by the Think Tank in the formulation of the Policy; *second*, we requested all documents relating to a meeting held for the formulation of the Policy; *third*, we requested all documents held for multiple meetings for the creation of the Policy and *fourth*, we requisitioned all suggestions and comments received by the Think Tank from stakeholders **before** the release of the Policy, that is, those suggestions/comments received in November, 2014.

In our [third RTI request](#), also filed in February, 2015, we had asked the DIPP to indicate all suggestions and comments received by the IPR Think Tank from different stakeholders in response to the first draft of the National IPR Policy (to have been submitted on or before January 30, 2015 [as per DIPP's Public Notice](#)).

RESPONSES BY THE DIPP TO CIS' RTI REQUESTS

The DIPP replied to our three RTI requests in multiple stages. At first, in a letter dated 12 February, 2015, [we were directed to resubmit our application](#), seemingly because we hadn't addressed the Postal Money Order to the correct authority, and were directed to do the same. Funnily enough, we received three other responses – one for each of our RTI requests (the first of these is not dated; the second one is dated 19 February, 2015 and then revised to 26 February, 2015; and the third is also dated 26 February, 2015).

THE FIRST RESPONSE: ON THE CONSTITUTION OF THE THINK TANK

[In the first of these responses to our requests](#), the Department has grouped our queries into five questions and provided a point-wise response to these questions, as under:

1. **Please indicate in detail the process followed by the Department of Industrial Policy and Promotion for the constitution for an IPR Think Tank to draft the National Intellectual Property Rights Policy under Public Notice No. 10 (22)/2013 –IPR-III dated November 13, 2014 (sic).**

In its response, the Department notes that it convened an *interactive meeting on IPR issues* which was chaired by the Minister for Commerce and Industry (Independent Charge), i.e., Ms. Nirmala Sitharaman. As per the Department's response, this meeting was held on 22

September, 2014 (“**the Meeting**”) and was aimed at discussing *issues related to IPRs, including finalization of the Terms of Reference for IPR Think-Tank proposed to be established* (sic.) The Department also notes that *representatives from various Ministries/Departments, Member of various Expert Committees constituted by the Department, besides IP experts and other Legal Practitioners* (sic) were invited to the meeting. The Department then states that the composition of the Think Tank was decided *on the basis of the discussions held in the department after the said interactive Meeting* (sic).

2. **If there was a meeting held to decide on the same, please include all necessary documents including the minutes of the meeting, records, documents, memos, e-mails, opinion, advices, press releases, circulars, orders etc in which the constitution of the aforesaid mentioned IPR Think Tank was decided (sic).**

The Department has attached the Minutes of the Meeting held on 22 September, 2014 (“**the Minutes**”) and states that there were no documents or papers that were circulated at this meeting and that the participants were asked to present their views on various IP issues at this meeting.

Excerpts from the Minutes

The Secretary of the Department (Shri Amitabh Kant) refers to a (then) recent announcement made by the Minister of State for Commerce and Industry (“**the Minister**”) on the formulation of the National IPR Policy and the establishment of an IPR Think Tank and states that the meeting had been convened to *discuss on various IPR issues with IP experts and legal practitioners so that it would provide essential inputs to the policy needs of the department* (sic). The Minutes report that Mr. Kant further stated that the objective of the department was to have *a world class IP system* and that this included a comprehensive National IPR Policy and *which takes care of various issues like IP creation, protection, administration and capacity building* (sic). He is also reported to have said that such a stakeholder interaction was important for the government to seek inputs.

The Minister is reported to have said that the purpose of the meeting was to constitute an IP Think Tank that would *regularly provide inputs to all IP policy needs of this department as well as advice government in disparate legal aspects* (sic). The Minutes also report her to have said that the department would finalize an IP policy within ninety days of the Meeting, based on the inputs of the participants.

According to the Minutes, various issues emerged from the discussion. *Inter alia*, these include *first*, that the proposal to constitute the Think Tank was a welcome measure, along the lines of similar initiatives taken by Australia, South Korea, the United Kingdom and the United States of America; *second*, that in order to remove misconceptions held by *foreign stakeholders* about IP enforcement in India, there was a need to highlight judgments of Indian courts that were favorable to *foreign stakeholders and MNCs*; *third*, that the national policies on telecom, manufacturing and IP ought to be integrated; *fourth*, that the focus of the Policy should be ***increase in creation of IP including commercialization of IP and strengthening human capital and IP management*** and *fifth*, that empirical studies should be conducted to examine the feasibility of Utility Models protection, that there was a need to revise the law on Geographical Indications and that the Policy should include protection for traditional knowledge and guidelines for publicly funded research.

The Minister is then said to have identified six major areas during the discussion, including *IP institution, legislation, implementation, public awareness, international aspects and barriers in IP growth* as areas to be covered under the Policy.

Who attended the Meeting?

Attached with the Minutes was also a list of participants who attended the Meeting. Out of the thirty six attendees, *I have not been able to locate a single individual or organization representing civil society*. Participants include representatives from various government departments and ministries, including *inter alia*, the DIPP, the Department of Commerce, the Ministry of External Affairs, the Ministry of Information and Broadcasting, the Copyright Division from the Department of Higher Education of the Ministry of Human Resources Development, the Office of the Controller General of Patents, Designs and Trademarks and the Ministry of Culture. The Meeting was also attended by representatives of corporations and industry associations, including FICCI, CII and Cadila Pharmaceuticals; in addition to representatives from law firms including Luthra and Luthra, K&S Partners and Inventure IP and academics including, *inter alia*, faculty from the Asian School of Business, Trivandrum, Indian Law Institute, Delhi, Tezpur University, Assam, National Law University, Delhi, NALSAR University of Law, Hyderabad, the Indian Institute of Technology, Madras and the National Law School of India University, Bangalore.

- 3. If there were multiple meetings held for the same please provide all necessary documents including the minutes of all such meetings, records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders etc. for all such meetings held (sic).**

The Department answered, “No”; which I’m taking to mean that there weren’t other meetings held for the formulation of the Think Tank or the Policy. This is interesting, because the Minutes (referred to earlier) speak of another inter-ministerial meeting *including IP experts and legal practitioners* slated to be held around the 10th of October, 2014, to discuss the framework of the Policy.

- 4. If a directive or directives were received by the Department of Industrial Policy and Promotion from any other government body to constitute such a think tank, please provide a copy of such a directive received by the DIPP from any Government authority, to constitute such a Think Tank (sic).**

The Department answered, “No”; which I’m taking to mean that there was no communication received by the Department to constitute this Think Tank.

- 5. Please indicate in detail the process of shortlisting the members of the IPR Think Tank by the Department of Industrial Policy and Promotion or any other body that was responsible for the same (sic).**

The Department replied that the answer to this was the same as that to the first question.

THE SECOND RESPONSE: THE DRAFTING OF THE POLICY

[The second of the Department’s responses](#) to our requests came in the form of separate responses to each of our four questions, as under:

- 1. Please indicate in detail the process followed by the IPR Think Tank constituted by the Department of Industrial Policy and Promotion via Public Notice No. 10 (22)/2013-IPR-III dated November 13, 2014 while framing the first draft of the National IPR Policy dated Dec. 19, 2014 (sic).**

The Department stated that the IPR Think Tank conducted its meetings independently without any interference from the Department. The Department then stated that the Think Tank had

received comments from stakeholders via a dedicated email id and *conducted the interactive meeting with stakeholders while framing the draft on the National IPR Policy.*

- 2. If there was a meeting held to decide on the same, please include all necessary documents including the minutes of the meeting, records, documents, memos, e-mails, opinion, advices, press releases, circulars, orders suggestions etc. related to drafting of such National IPR Policy Think Tank chaired by Justice Prabha Sridevan (sic).**

The Department replied that since the IPR Think Tank had decided *its process by themselves* (sic), the Department *do not have the minutes of the meeting etc. conducted by the IPR Think Tank* (sic). It attached with its reply a copy of the press releases announcing the composition of the Think Tank and asking stakeholders to submit comments to the first draft of the Policy.

- 3. If there were multiple meetings held for the same, please provide all necessary documents including the minutes of all such meetings, records, documents, memos, e-mails, opinions, advices, press releases, circulars, order suggestions etc. for all such meetings held (sic).**

The Department replied that the response to this was the same as that to the earlier question above.

- 4. Please provide all the suggestions and comments received by the IPR Think Tank from stakeholders after the DIPP issued Public Notice No. 10/22/2013-IPR-III dated 13.11.2014 asking for suggestions and comments on or before November 30, 2014 (sic).**

The Department replied that the comments and suggestions were received by the Think Tank directly and that therefore, the Department was *not in a position to provide the same.*

THE THIRD RESPONSE: STAKEHOLDER COMMENTS

[In its third \(and final\) response](#) to our requests, the DIPP replied to our query as under:

- 1. Please indicate all the suggestions and comments received by the IPR Think Tank by different stakeholders on or before January 30, 2015 on its first draft of the National Intellectual Property Policy submitted by the IPR Think Tank on December 19, 2014.**

The Department said that *the suggestions and comments on the draft on National IPR Policy have been received by the IPR Think Tank directly. As such this Department is not in a position to provide the same (sic.).*

OBSERVATIONS ON THE DIPP'S RESPONSES

Prima facie, the responses by the Department are rather curious, leading to a range of oddities and unanswered questions.

WHO WILL WATCH THE IPR THINK TANK?

In its response to our first RTI request, the Department quite clearly stated that it decided the composition of the IPR Think Tank based on discussions in a meeting that it convened, which was also chaired by the Minister of State for Commerce and Industry, the parent ministry of the DIPP. In the same response, the Department also stated that it had not received any directive from any other ministry/government department directing the constitution of the IPR Think Tank, leading to the conclusion that this decision was taken by the DIPP/the Ministry of Commerce and Industry itself. Subsequently however, the Department justified its refusal to

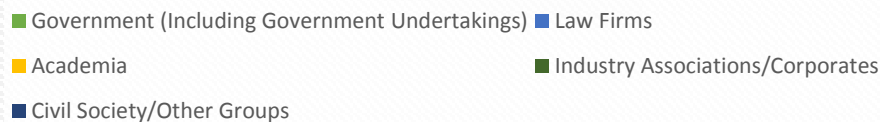
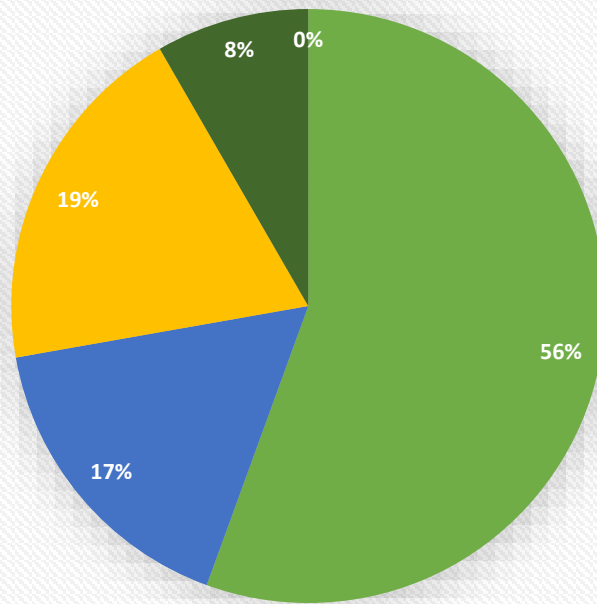
furnish us with documents leading to the development of the first draft of the National IPR Policy (contained in our second RTI request) by stating that the IPR Think Tank conducted its business without any interference from the Department, and that the Department did not have access to any of the submissions made to the IPR Think Tank or any of the internal minutes of the meetings etc. that were a part of the process of drafting the IPR Policy.

Various press releases by the DIPP have stated that it has constituted the IPR Think Tank, and that the purpose of the IPR Think Tank [would be to advise the Department on IPR issues](#). Visibly, the Department intends for the IPR Think Tank to play an active role in shaping India's IP law and policy, including suggesting amendments to laws wherever necessary. It is concerning therefore that on the question of accountability of the IPR Think Tank, the DIPP remains silent. It may be argued perhaps, that the IPR Think Tank constitutes a 'public authority' under Section 2(h)(d) of the [Right to Information Act, 2005](#) ("RTI Act"). In that case, the IPR Think Tank would have to fulfill, *inter alia*, all of the obligations under Section 4 of the RTI Act as well as designate a Public Information Officer. Alternatively, given that the IPR Think Tank has been constituted by the DIPP and performs functions for the DIPP, the Public Information Officer of the DIPP would have to furnish all relevant information under the RTI Act (including the information that we sought in our requests, which was not provided to us).

WHO ARE THE STAKEHOLDERS?

Even a preliminary look at the list of participants at the Meeting (based on which the Department constituted the IPR Think Tank) reveals that not all stakeholders have been adequately represented. I haven't been able to spot any representation from civil society and other organizations that might be interested in a more balanced intellectual property framework that is not rights-heavy. The following chart (based on a total sample size of 36 participants, as stated in the list of participants provided to us by the DIPP) will help put things in perspective.

Who Attended the Meeting?



WHAT COULD'VE BEEN DONE?

Setting aside arguments on its necessity, let us for the moment assume that this drafting of the National IPR Policy is an exercise that needed to have been undertaken. We must now examine what might possibly be the best way to go about this.

In 2014, the World Intellectual Property Organization (“WIPO”) (based on whose approach the Policy seems to have been based- at least in part), produced a detailed [Methodology for the Development of National Intellectual Property Strategies](#), outlining a detailed eight step process before a National IP Policy was implemented in a Member State. While this approach is one to be followed by the WIPO and might not be entirely suited to India’s drafting exercise, specific sections on the national consultation process as well as the drafting and implementation of national intellectual property strategies might prove to be a decent starting point.

(More on this in an upcoming article).

WHERE DO WE GO FROM HERE?

The DIPP’s responses have left me with more questions, probably the subject of more RTI requests. Is the IPR Think Tank a public authority for the purposes of the Right to Information Act, 2005? To whom should questions of informational accountability of the IPR Think Tank be addressed, if there is no information available on the IPR Think Tank, and the DIPP claims to have no access to it? Do we need to re-examine the draft National IPR Policy given that there has been inadequate representation of all stakeholders? What were the suggestions made by different stakeholders, and (how) have these been reflected in the first draft of the Policy? Was there an evaluation exercise conducted before the first draft of the Policy was released in order to better inform the formulation of the Policy?

We will be looking at these and other questions as they arise, and sending some of these to the DIPP in the form of RTI requests. (Watch the blog for more).