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MAINSTREAMING CSR TOWARDS DEVELOPING RESPECT FOR IPR

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I. INTRODUCTION

1. In the domain of business around the world today, Corporate Social Responsibility (CSR) is a much talked about topic. It is almost becoming a *mantra* to underpin the idea of good corporate behavior and thereby, to help grow acceptability of any business in the society.
2. Though the root of CSR is not exactly known, it is assumed that with the advent of the industrial revolution and the rise of private entrepreneurship, expectations grew for some sort of contributions from the business sector for welfare and development in the society. This became more pertinent after the second world war which left social services everywhere in total disarray.
3. However, the rise of environmentalism and the scandals in many top global business establishments spearheaded the need for greater responsibility from the business sector or community in terms of controlling air pollution, water contamination and the depletion of natural resources.

II. GROWING INTEREST OF THE STAKEHOLDERS

4. Since the late seventies, there has been an upbeat in interest of the stakeholders into the affairs of the business sector. Media, civil society and non-governmental organizations have been particularly scrutinizing businesses in terms of their state of operation including the use of resources, relationship with the communities, responsibilities towards the environment, as well as respect for human rights including the rights and privileges meted out to the workers.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO

5. Stakeholders of any business encompass a wide range of constituencies which include employees, shareholders, customers, suppliers, investors, regulators, employee families, non-governmental organizations, media, civil society and the community around which it operates. Businesses need to exhibit a strong stakeholder engagement because attention is growing steadily on its responsible, or rather acceptable, behavior. The array of expectations of the stakeholders has been growing very rapidly and strongly. These expectations ranged from financial status of the business to employee satisfaction to social and moral effects on the society. Stakeholders not only want the business to behave ethically and responsibly, but that they want businesses to ensure respect for labor standards, product quality, and the like.

6. It is also seen that stakeholders are themselves becoming more organized. In view of globalization, technological development and more importantly because of the growing interest of media and civil society, stakeholders are becoming more formal and conscious. The tragic incident of gas leakage in a chemical factory in Bhopal, India, and the killing of thousands of people in the neighborhood; the reported complicity of Shell in the execution of senior political activists in Nigeria; the scandals and collapse of giant businesses like Enron and Worldtel in the United States; allegations of child labor in the Nike supply chain; and many other incidents have also motivated the stakeholders to be cautious. All underscored the fact that there were lapses in the responsibility of business and that businesses needed to follow ethical standards in their operations. It was felt that while business should have the economic responsibility of making profit to keep the shareholders happy, they should have the moral or social responsibility of doing no harm to the environment and helping the society to meet its development aspirations.

III. CHANGING ROLE OF BUSINESS

7. In today's era of globalization accompanied by unprecedented technological development, business is the most powerful institution. In many places, big corporate players are having great influence in shaping up national socio-economic policies. They are seen massively engaged in public health issues, education and human development matters. All these are taking place under the umbrella of a responsibility which is dubbed either as Corporate Social Responsibility or Social Responsibility or Social Accountability and so forth. No matter how they are called, the perceived theme and intended focus of all are same – to be ethical in operation and to help ensure socio economic sustainability. In a broader sense, we may like to continue calling it Corporate Social Responsibility or CSR.

IV. WHAT IS CSR?

8. There is in fact no universal definition of CSR, as the concept is always being subjected to fine-tuning. Each business would have their individual definition of CSR and induct it in their vision and mission accordingly. The areas impacted by CSR are also diverse and, as such, different companies would give different emphasis in their programs and actions. The European Commission has dubbed CSR as *a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis*. The World Business Council on Sustainable Development has defined it as *the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life*. The underlying theme of these definitions and many others on it indicate that companies ought to contribute to the overall well-being of the society besides running their own business operations. The principles of CSR encompass the management of social, environmental and economic impacts of the company.

9. CSR has two main perspectives – internal and external. The internal aspect involves behavior within the business that refers to employees, suppliers and shareholders while the external one relates to its commitment and dealing with the stakeholders that include legislators, shareholders, investors, non-governmental organizations, customers, community and finally, the media. By coupling both, internal and external perspectives, it can be gauged that business has financial commitments to employees, consumers and shareholders while at the same time, it has social and environmental commitments to the communities or society, be they affected or not.

10. CSR customizes three broad aspects:

- (i) First, it underlines compliance with legal responsibilities (e.g. tax, health and safety, workers rights, consumer rights, environmental regulations) and industry standards.
- (ii) Second, it concerns minimizing or eliminating the negative effects of business on society and managing risks (for example of human rights abuses and environmental pollution).
- (iii) Third, it involves increasing the positive effects of business and creating value through innovation, investment and partnership aligned towards social and environmental good (for example job creation, social and economic development and conflict resolution).

11. In the past, CSR was mostly regarded as an elaborate form of philanthropy. Today, the core is the same: *giving away*, but it encompasses a wider and deeper meaning as to contributing and ensuring well-being of society. In the past, philanthropic actions did not incorporate responsibility after the *giving away*, but today the stress of CSR is more on a long term responsibility and a positive return in terms of public endorsement. Reporting, dialogue with stakeholders, working in partnership with government and non-governmental organizations demonstrate the response approach.

12. Stakeholder relationship assumes inseparable significance for CSR. Companies have begun to learn to be transparent and open to the stakeholders for sustainability of their business. The success of every business is dependent upon its relationship with its stakeholders, not least its customers. Enhancing the relationship a company has with its stakeholders increased the potential support that each group has for the company and its strategic objective.

13. In fact, the attention of the stakeholders is growing steadily upon responsible behavior of the business. Stakeholders are not only keen to see the financial status, but would also watch employee satisfaction as well as social impacts. In this aspect, CSR advocates continuous dialogue with all stakeholders to develop and command mutual trust and confidence.

14. CSR offers a means by which companies can manage and influence the attitude and perceptions of their stakeholders, building their trust and enabling the benefits of the positive relationship to deliver business advantages.

15. It also provides a means by which companies better understand and manage risk. All business takes risks and makes judgments about the level of risk that is appropriate. Many corporations are broadening their definition of risk to encompass wider and longer term risks that incorporate social and environmental issues. In addition, they are engaging with a wider external audience to understand the needs and expectations and take action where appropriate. Furthermore, CSR stimulates learning and innovation within organizations helping to identify new market opportunities, establish more efficient business processes and to maintain competitiveness.

16. Besides, CSR helps ensure compliance with regulatory requirements. It helps keeping the business in the right track of ethical standards. With involvement with the local community it offers ideal opportunities to generate a positive feeling among the people who themselves will come forward to safeguard the business at times of need.

V. IMPORTANCE OF CSR

17. Business is a part of the society. Therefore, corporate business houses have a great role to play in ensuring the development and sustainability of the society. Business is not only the engine of growth, but it can contribute immensely towards social, economic and political integrations in the society. As renowned management consultant Peter Drucker has said, a corporate can discharge its social responsibilities if it converts them into self interest and takes those as business opportunities. The proper social responsibility of a business is to turn the social problems into economic opportunity.

VI. RATIONALE OF CSR

18. CSR is embedded in the changing relationship between business and the society. Gone are the days when people would be satisfied to watch business as only for profit. Even one would not disagree with the great economist Milton Friedman who said that the social responsibility of business is to increase profits. In fact, an in-depth analysis of Friedman's thought shows that he meant something beyond profit as well when his full statement said *there is one and only one social responsibility of business – to use resources and engage in activities designed to increase its profits so long as it stays within the rules of the game*. There has been a lot of pedantic arguments as to what he meant actually by *rules of the game*. However, it was assumed on a positive note that the late economist referred to the rules of the game as engagement in open and free competition without deception or fraud.

19. Taking cue to Friedman's thoughts, it served right the expectation of society from the business. Society's expectations keep on increasing every time as it faces new challenges, whether they be environmental or human rights or labor standards or health issues or even pirated products. All these new and upcoming concerns can be resolved through the practice of CSR.

20. Investors have already indicated that CSR can be a good indicator for business performance. They have been advocating for *socially responsible investment*, popularly known as SRI. This responsible investment allows comfort to ensure that not so much wrong would be entailed at the end of any production or service and that the stakeholders would not have much scope to decry the operation of any business.

VII. CSR AND SUSTAINABLE CONSUMPTION

21. Over the years, economic development and unprecedented technological innovations have propelled massive consumerism in the society. This has motivated business to expand in width and length taming people to go beyond meeting their basic needs and exploiting their temptations. It is now often questioned whether business is doing the right thing in over exploiting resources on earth or in generating irrevocable wastes or in contributing to the pollution of air and contamination of water. These factors urgently call for redesigning our current consumption trends. As Mahatma Gandhi has said, *the earth has enough to meet our need but not enough to meet our greed*. In this context, all fingers are obviously pointed towards business urging upon them to be prudent in resource use and enabling a conducive consumption practice.

22. Business has a definite role in this regard. Being the promoter of technology, producer and market operator, business has the key role to ensure sustainable consumption. Business

provides everything to the consumers. Therefore, what they provide and how do they do so, is the central point in shaping the consumer behavior. Whether it is innovation, research, development, quality control, pricing etc., business has the pivotal role.

23. As the debate of sustainable development and consumption has been gaining ground over the last few decades, the role of business is coming up as an important issue. We have thus seen the evolution of concepts of *cleaner production*, *environmental impact assessment*, *environmental management system*, *ISO certification*, *green marketing*, and the like. These are the resultants of their engagement with a sustainable development agenda in the backdrop of creating an equilibrium between human needs and the available resources.

24. The question of sustainable consumption merits a high degree of significance. Human needs keep on growing in equation with the population growth and improved lifestyle. As a result, the pressure on the finite resources not only becomes more stringent but the negative impacts on our ecology develop risks of incalculable magnitude. It is now imperative that our approach towards production and consumption is tailored to ensure a compatible and sustainable future. To make it happen, business can use CSR to raise awareness about cleaner production and ethical supply chain to ensure consumer rights protection. CSR enables the active loop among the producer, market and consumers by ensuring acceptable labor standards, proper use of resources, hazard free products, legally tuned operation process. One area where consumer rights can be best protected is to ensure the protection of intellectual property rights. Infringement of IPR goes against the spirit of CSR.

25. It is heartening to note that in many countries, particularly in Asia, campaigns have started under the aegis of CSR to make enforcement of IPR regime stronger. In some countries including China, companies have clubbed together under the umbrella of CSR to set up IPR protection aid centers wherein legal help is provided against patent abuse. These are heartening because they ensure long term solutions.

VIII. ISO 26000

26. ISO 26000 is an ISO International Standard giving guidance on social responsibility. In fact, it is an extended form of CSR but intended for use by organizations of all types, in both public and private sectors, in developed and developing countries, as well as in economies in transition. It will assist them in their efforts to operate in the socially responsible manner that is demanded by the society.

27. One major tenet of ISO26000 is fair operating practices which refer to ethical conduct in an organization's dealings with other organizations. These include relationships between organizations and government agencies, as well as between organizations and their partners, suppliers, contractors, competitors and the associations of which they are members. Fair operating practice issues arise in the areas of anti-corruption, responsible involvement in the public sphere, fair competition, promoting social responsibility in relations with other organizations and respect for property rights. Fair competition and respect for property rights cannot be achieved if organizations do not deal with each other honestly, equitably and with integrity.

28. With ISO 26000 coming to the forefront of CSR, hopes can be grown for more respect for Intellectual Property rights and protection. The ISO 26000 is a broad-based tool that incorporates guidance on wide ranging matters. These include fair operating practices in which it stresses on anti-corruption, fair competition and respect for property rights.

29. ISO 26000 looks like an extended CSR guidelines. More interestingly, it is not only for businesses but for any organization, public or private.

IX. CONCLUSION

30. CSR is all about ethical way of doing business. It is not any form of law but a set of guidelines to conduct business so that the consumers are not deceived, so that the employees are not exploited, so that ecology is not harmed and so forth. It should be a proactive but voluntary responsibility stemming from the mission and activities of the companies. Every company has its own economic goal but a good company will always relate its activities to social and environmental goals as well. It should be remembered that today *the business of business is not only business but taking care of the community and environment around as well*. While economic responsibility of the company will be to make profitable operations to meet and satisfy the expectations of the shareholders, its environmental responsibility entails sound management of natural resources to control environmental degradation and its social responsibility encompasses actions to protect consumer's choice, rights and safety. For successful companies, interest in the environment and welfare of the people are gaining ground. There is a growing acceptance that profits and broader values and principles go hand in hand.

31. It is contended that CSR can help in developing respect for IPR. CSR has already been deemed as a good tool for ensuring worker's rights and safety; consumer's rights and safety; and as a whole, the entire community's rights and safety. These rights and safety measures entail use of proper raw materials, cleaner production process, befitting working conditions for the workers, supplying the desired goods to the consumers, relaying all information about the products and contents to the users and so forth. All these are besides paying due taxes and being compliant to all local laws and regulations.

32. Two of the major reasons for widespread IPR infringements are the lack of awareness among the consumers about the products and services they are buying, as well as of the socio-economic benefits of protecting IP. In addition, there is often a lack of mutual respect in the relations between corporations and governments and/or in the relations between corporations and local consumers / communities. Against this background, it is indeed encouraging that the Advisory Committee on Enforcement will devote time to initiate discussions on this issue at this Session. Moreover, it was noted that the this matter was explored during a WIPO-led panel at the Sixth Global Congress on Counterfeiting and Piracy, held in Paris, France, from February 2 to 3 this year, the outcome of which is reflected below¹:

“Corporate social responsibility – nurturing respect for IP

- The panel supported WIPO's initiative to further explore the potential of CSR in the context of creating an environment within which to respect IP rights.
- Foreign investment is to be seen in the broader context of respecting the rule of law. In this sense, creating an environment in which property (including IP) is protected can have positive effects on investment.
- Addressing counterfeiting and piracy requires thinking beyond IP enforcement as such. It should be a long-term investment aiming at long-term partnerships in which a company becomes “a citizen” of the local community. In this regard, CSR can be an important tool to build mutual trust and respect.
- Sustainable anti-counterfeiting approaches require an understanding of the impact of enforcement action in a broader sense, linking enforcement to a country's long term development goals.
- Enforcement officials need to understand reasons and socio-economic benefits of protecting IP, rather than merely applying the law.
- Consumer awareness remains crucial. In that context, greater commitment by consumer associations and groups would be desirable.”

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See http://www.ccapcongress.net/archives/Paris/files/ParisOutcomesStatement_6thGlobalCongress.pdf

33. Through implementing CSR, in policies and practices, companies can educate the consumers; can develop a culture amongst consumers not to be over-taken by a temptation of consuming counterfeit goods, and so forth. As a part of CSR, companies need to spend much more time and resources on Research and Development so as to evolve products that could be helpful for the consumers in terms of pricing and value addition.

34. In the wake of massive economic doldrums hatched by counterfeiting and piracy, it is imperative that business take up the holistic role of dealing with IPR infringements. They can conveniently do this through their CSR framework. However, more research and analysis may be required, including in the framework of WIPO's Strategic Goal VI Building respect for IP, to fully understand the role of CSR in sustainable development.

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