

THE IP SYSTEM AND THE COMPETITIVENESS OF NATIONAL ENTERPRISES AND INDUSTRIES IN NEPAL

THIMPHU, KINGDOM OF BHUTAN

15/12/2011

NEPAL BACKGROUND



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- ∞ Total area : 147,181
 - ∞ The projected population of the current year : 28.58 millions
 - ∞ Literacy Rate : 65 %
 - ∞ Economically Active Population : 58.2 %
 - ∞ Per Capita Income : US \$ 300

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GLANCE AT NEPAL



MOUNT EVEREST



TRADITIONAL MEN ATTIRE



PASHUPATINATH TEMPLE



FEWA TAL



TYPICAL WOMEN ATTIRE



LUMBINI

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15/12/2011

ORGANIZATIONAL SETUP FOR PROTECTION OF INTELLECTUAL PROPERTY



- ☞ Department of Industry (DOI)
Department under Ministry of Industry
Responsible for Industrial Property Right Protection
- ☞ Nepal Copyright Registrar's Office (NCRO)
A Department under Ministry of Federal Affairs,
Constituent Assembly, Parliamentary Affairs and Culture
Responsible for Copyright and Related Right Protection.

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HISTORY OF IP PROTECTION



- ☞ First Patent Design and Trademark law came into existence in 1936.
- ☞ Later repealed by The Patent Design and Trademark Act, 1965 which is into the enforcement with two amendments in it (October 18, 1987 and November 24, 2006).
- ☞ First copyright act was enacted in the year of 1965, which was later repealed by the Copyright Act, 2002 (Current copyright related statute of Nepal).
- ☞ Member of WIPO establishing convention (Stockholm Convention) (Member since February 4, 1997).
- ☞ Member of Paris convention for the Protection of Industrial Property (Member since 22 June 2001).
- ☞ Member, Trade Related Aspect of Intellectual Property Rights (TRIPS) & WTO (since 2004).

PROVISIONS UNDER PATENT, DESIGN AND TRADEMARK ACT, 1965



- ☞ Defines the Patent, Design and Trademark.
- ☞ Clarifies the application process.
- ☞ Provision for examination committee chaired by the Director General of Department of Industry (DOI).
- ☞ Provision of Registration Certificate after Written information in case of fail in registration.
- ☞ Publication of registered Patent by DOI.
- ☞ Provision of compensation in violation of the Act. Punishment up to Rs.0.5 Million in infringement and the confiscation of goods or commodities related to the offense.

TERMS OF PROTECTION



- Registered Patent is valid for seven years and can be renewed two times of same period.
- Registered Trademark is valid for Seven years and can be renewed many times of same period.
- Registered Design is valid for five years and can be renewed two times of same period.
- Trademark may be cancelled if not used upto one year.
- Foreign Patent, Design, Trademark will be registered without examination if filed with registration certificate of foreign country.
- Ownership transferred as per written agreement/permission

PROVISIONS UNDER COPYRIGHT ACT, 2002



- All protectable items covered as international instruments.
- Provision of moral and economic rights, registration, and provision of compensation over infringement.
- Up to 6 month imprisonment or up to Rs. 0.1 million penalty or both for infringement. Infringement cases treated as criminal cases & police officer will investigate.
- District court is responsible for treatment with shortcut process

TERMS OF PROTECTION



- ☞ Life long and 50 years after death for literary works.
- ☞ 50 years for Performer, Sound recording, Producer and Broadcaster.
- ☞ 25 years for architect design, Photographic work & applied art.
- ☞ No compulsory registration for protection.
- ☞ Work created by an author or producer residing in Nepal or in the member country of WTO shall enjoy the protection under this act.

COMMITMENT FROM NEPAL ON TRIPS



- ☞ Will Provide Sufficient protection on each form of IP with necessary legal arrangements.
- ☞ Existing Patent, Design and Trademark Law will be amended to make TRIPs compatible.
- ☞ Patentable layout of integrated circuits, Test data/undisclosed circuits, would be protected under Industrial Property Protection Law.
- ☞ Intellectual instruments for Plant Varieties Protection, Access to Genetic Resources will be adopted.
- ☞ Principle of National Treatment and Most Favoured Nations will be followed.
- ☞ Will become a member of Berne Convention (for copyright protection)
- ☞ Will establish new separate IP protection office.
- ☞ Training and awareness program will be conducted.
- ☞ TRIPs provisions will be implemented upto January 1, 2007.

IMPLEMENTATION STATUS



- ☞ Principle of MFN and NT has been applied.
- ☞ Copyright Act was repealed by new Copyright Act (2004), New Copyright Rules has been also enforced.
- ☞ Member of Berne Convention (2005)
- ☞ Trying to be a member of Rome Convention (1961)
- ☞ Draft of New Industrial Property Law is in its final stage.
- ☞ Competition Promotion and Market Protection Act, 2006 has been enforced.
- ☞ New Industrial Policy, 2010 adopted (with vision of Single IP office)

RECENT DEVELOPMENTS



- ☞ The Government of Nepal set up a Organization and Management survey committee in order to establish a separate IP office in Nepal. The office would be responsible for all types of IP protection in Nepal. The committee has recently submitted its report to the government and the government is underway to take necessary decisions. The Committee has suggested making necessary legal provisions for the protection of all types of Intellectual Properties in the country.
- ☞ The government is on the way to make a separate IP policy and some works in this direction has begun.
- ☞ Draft of New Industrial Property Law is in its final stage.
- ☞ Competition Promotion and Market Protection Act, 2006 has been enforced.
- ☞ New Industrial Policy, 2010 adopted (with vision of Single IP office).

COMPETITIVENESS OF NATIONAL ENTERPRISES AND INDUSTRIES IN NEPAL



- Although some amendments have been made in the existing IP laws to partially comply with the WTO requirements under TRIPS, many legal requirements are yet to be incorporated in the prevailing two Acts for full compliance to Nepal's WTO accession commitment.
- some national enterprises have innovated new technologies suitable for the country and have got the IP protection over them.
- almost 30,000 domestic and foreign trademarks have been registered
- The infringement of trademark is rampant in the country; however the national trademark office has taken necessary actions to combat it. There is only civil procedure in case of Infringement, entrepreneurs are asking for criminal procedure.
- Infringement of Nepalese trademarks in other countries affecting Nepalese Pashmina and Carpet industry.
- Nepal is in the process to join the Madrid system to overcome such types of double registration system.

CHALLENGES



- Lack of necessary resources,
- Lack of Necessary Legal instruments
- political instability
- Lack of awareness on IP

OPPORTUNITIES FOR NEPALESE ENTERPRISES



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- ☞ Geographically located between the countries (India and China) with large population and market.
 - ☞ Low labour cost.
 - ☞ Enforcement of IP Laws (Although not fully complying with WTO/TRIPS, draft of New Industrial Property Law is in its final stage.) and the Copyright law is TRIPS compatible.
 - ☞ Business friendly Industrial Enterprise policies and regulations.
 - ☞ Investment friendly Foreign Investment and Technology Transfer laws.



THANK YOU