



NATIONAL INTELLECTUAL PROPERTY POLICY

2018

Royal Government of Bhutan



དཔལ་ཚལ་འབྲུག་གཞུང་། བསྟན་ཀླུ་ལྷན་ཁག།

Ministry of Economic Affairs
Royal Government of Bhutan
Tashichho Dzong
Thimphu



བསྟན་ཀླུ་ལྷན་པོ།
MINISTER

Foreword

Learning and innovation go hand in hand. The arrogance of success is to think that what you did yesterday will be sufficient for tomorrow.

- William Pollard

Intellectual Property or creations of the human mind, the human intellect is assuming ever-increasing importance in our lives. It deals with inventions, literary and artistic works, and symbols, names and images used in commerce.

It is the creations in the areas of science, technology and culture that makes it possible for humanity to progress and hope for a better well-being. They add variety, gaiety and enjoyment to our lives.

The topic of Intellectual Property now figures prominently among discussions on the Internet and they influence all major bilateral and international trade agreements. And yet, as important and relevant as they are, the intellectual property system alone is inadequate to fuel the engines of human creativity and ingenuity and to restore greater coherence with the international trading system, we need the involvement and engagement of all other sectors such as art and craft, trade and industry sector, education, R&D and the civil society.

The National Intellectual Property Policy (NIPP), has been formulated to provide clarity in view of the following inherent imperatives:

1. The development of the intellectual property system is a complex task as it cuts across all sectors in the economy;

2. The need to set-up linkages between the industry, the R&D, university and the private sector; and
3. To provide a framework for improving the intellectual property system as a catalyst for innovation and development.

The concerns of indigenous people, local communities and many states over the unauthorized or inappropriate use of Traditional Knowledge and Traditional Cultural Expressions remain a challenge. The misappropriation and use of our textile designs for commercial gain is a case in point. I hope that the ongoing negotiations and work in the WIPO Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore will find solutions to address some of these concerns.

We hope the adoption of this policy, will provide that synergy and clarity among various sectors and stakeholders to use the system to harness innovation for the greater growth and progress of our social, educational, economic and cultural well-being.

This policy was approved in the 151st Lhengye Zhungtshog held on 13th February 2018.

A handwritten signature in blue ink, appearing to be 'Lhengye Zhungtshog', with a long horizontal line extending to the right.

TABLE OF CONTENTS

1. INTRODUCTION	1
2. GUIDING FRAMEWORK	2
3. VISION	2
4. MISSION	3
5. OBJECTIVE	3
6. CONTEXT	3
7. NATIONAL INTELLECTUAL PROPERTY POLICY	6
(1) Develop a balanced and development-oriented IP laws and regulations	7
(2) Establish an effective institutional framework	7
(3) Increase strategic use of IP assets and greater use of IP system for protection of TK, GR and TCEs	9
(4) Facilitate transfer of technology	10
(5) Improve access to the results of innovation and creativity	11
(6) Strategic participation in the International IP System	12
(7) Incentives to encourage innovation and creativity	12
8. THE WAY FORWARD	13

ACRONYMS

ABS	: Access and Benefit Sharing
EDP	: Economic Development Policy
GI	: Geographical Indication
GNH	: Gross National Happiness
GR	: Genetic Resources
ICT	: Information and Communication Technology
IP	: Intellectual Property
DoIP	: Department of Intellectual Property
IPRs	: Intellectual Property Rights
LDC	: Least Developed Country
NIPP	: National Intellectual Property Policy
R&D	: Research and Development
RGoB	: Royal Government of Bhutan
RUB	: Royal University of Bhutan
TCE	: Traditional Cultural Expression
TK	: Traditional Knowledge
TISCs	: Technology and Innovation Support Centers
WIPO	: World Intellectual Property Organization

1. INTRODUCTION

The Intellectual Property (IP) system is one of the cornerstones of a modern economic policy at the national level and a catalyst for development. It is an important tool for sustainable development especially, for the least developed countries (LDCs). IP issues and concerns are also becoming increasingly integrated with other global issues, and international cooperation in this field can no longer proceed in isolation from the broader policy environment. They have been brought into debate on the protection and exploitation of biodiversity resources, on the development and transfer of environmentally friendly technology, on protection of Traditional Knowledge (TK), Traditional Cultural Expression (TCE), Folklore and Genetic Resources (GR) and on other aspects of economic and social development.

The IP situation in Bhutan is still in its nascent stage. The concept of IP was not a part of the national legal system until very recently. The adoption of the Industrial Property Regulations on April 4, 1997 was the first step taken by the Royal Government of Bhutan (RGoB) towards introducing a legal system for the protection of intellectual property rights (IPRs) in the country. Facilities for the registration of trademarks, industrial designs and patents were put in place in 1997, 2009 and 2012 respectively. The Industrial Property Regulations, 1997 was superseded by the Industrial Property Act of the Kingdom of Bhutan, 2001 and the Copyright Act of the Kingdom of Bhutan, 2001. In addition to putting in place legislations and establishing registries for registering IP, the Government has initiated various awareness programmes and workshops.

The RGoB accords high priority to the development of IP that will help promote creative and innovative solutions (products and services) to improve the economic, social and cultural well-being of the society. However, the development of the IP system is a complex task as its activity cuts across all sectors in the economy. The promotion of

national creative and innovative activities not only require putting in place legislations and registries but also development and deployment of educational training programmes, policies for upgrading knowledge and skills, provision of adequate resources and facilities for researches, encouragement of inventive activities in enterprises, effective use of modern emerging technologies, linkages between industries, research and development (R&D) institutions and universities, encouraging industries and enterprises in the private sector to plough back or invest greater funding in R&D and ensuring effective protection of IP. Therefore, active participation of various stakeholders is vital to bring about national industrial and economic progress.

The National Intellectual Property Policy (NIPP) provides a framework for improving the IP system as a catalyst for development and in supporting the realization of the Constitution of the Kingdom of Bhutan, the principles of Gross National Happiness (GNH) and the aspirations set out in Bhutan 2020: Vision for Peace, Prosperity and Happiness and the Economic Development Policy 2016 (EDP 2016).

2. GUIDING FRAMEWORK The

NIPP is based on the following:

- The Constitution of the Kingdom of Bhutan
- Bhutan 2020: Vision for Peace, Prosperity and Happiness
- GNH Development Philosophy
- EDP 2016
- International IP Treaties and Conventions

3. VISION

To promote the use of Intellectual Property for sustainable socio-economic development.

4. MISSION

To grant IPRs to promote creativity and innovation for social, cultural and economic development.

5. OBJECTIVE

The overall objective of the policy is to develop an IP system consistent with international best practices that encourage creativity, innovation, inventiveness and provide protection through appropriate legislations.

6. CONTEXT

IP consists mainly of two branches, one being Industrial Property dealing with technological inventions, utility models, trademarks for goods and services, industrial designs etc.; the other being Copyright, which protects literary, artistic and derivative works. IP plays an important role in the development of a country. Development of the knowledge economy, the globalization of markets as well as the increasing complexity of products and services has increased the importance of IPRs. IPRs refer to a broad range of legal rights conferred by laws of the IP and exploitation of these rights has varying developmental impacts. A country's IP regime can achieve the desired socio-economic and cultural goals if there is a proper balance between the exclusive rights granted to right holders and the exceptions to those rights to permit broader dissemination of knowledge and access to technology, products and services for the benefit of society. A balanced IP system encourages the development of creative and innovative products and services that improve the socio-economic and cultural well-being of the society.

Since Bhutan joined the World Intellectual Property Organization (WIPO) in 1994, significant progress has been made in the following four broad areas of the Department of Intellectual Property (DoIP)'s mandate:

(1) The IP legal framework in Bhutan

Bhutan at the moment has two IP specific laws that have been enacted and are operational. These are the Copyright Act of the Kingdom of Bhutan, 2001 which provides protection for literary and artistic works, such as books and other original writings, speeches and lectures, dramatic works and stage productions, musical works, audio-visual works, works of architecture, drawings, photography, art and illustrations, and derivative works, such as translations and adaptations and collections of works. The Industrial Property Act of the Kingdom of Bhutan, 2001 provides protection for patents, industrial designs, trademarks including collective marks, trade names and protection against acts of unfair competition.

(2) IP Administration

The DoIP has been entrusted with the responsibility of registration and administration of IP in the country. It is currently made up of two divisions as follows;

- ❖ Copyright Division
 - Voluntary Copyright Registration Unit
 - Public Outreach Unit

- ❖ Industrial Property Division
 - The Trademarks Unit
 - The Industrial Designs Unit
 - The Patents Unit
 - Geographical Indications Unit

- ❖ Legal & ICT Unit

(3) Awareness and use of IP

The DoIP has been entrusted with the responsibility of promoting awareness on IP matters, including building public awareness on the importance and use of IP. The protection and enforcement of IP involves the active engagement of several agencies, including the police, the judiciary and the customs, as well as IPR owners, managers and licensees. Each has a separate role to play but in a coordinated manner to achieve the intended outcome of deterring infringement and successfully prosecuting those who willfully infringe the rights of others. The low level of awareness and use of the IP system in Bhutan demand extensive IP awareness campaigns for both users and owners as well as for the enforcement agencies.

(4) Participation in the International IP System

The protection of IPRs is increasingly becoming a key factor in the national strategic planning process for achieving sustainable socio-economic development. IPRs help in improving the international competitiveness of domestic industry and business, be it in the context of technology transfer, international trade, identifying new markets or assisting the expansion and growth of cottage, small and medium enterprises and improving their links with university-based research both within and abroad.

As a member of WIPO, Bhutan has been increasing its engagement with the international IP system and has acceded to some important IP Conventions and Agreements with WIPO (See table below). In order to further benefit from the opportunities offered by IPRs there is a need for Bhutan to actively participate in the international IP system.

SL. NO.	CONVENTION/AGREEMENT	ENTRY INTO FORCE
1.	Convention establishing the World Intellectual Property Organization	March 16, 1994
2.	Paris Convention for the Protection of Industrial Property	August 4, 2000
3.	Madrid Agreement concerning the International Registration of Marks	August 4, 2000
4.	Protocol relating to the Madrid Agreement concerning the International Registration of Marks	August 4, 2000
5.	Berne Convention for the Protection of the Literary and Artistic Works	November 25, 2004

7. NATIONAL INTELLECTUAL PROPERTY POLICY STRATEGIES

The NIPP comprises of the following seven strategic objectives:

- (1) Develop a balanced and development-oriented IP laws and regulations;
- (2) Establish an effective institutional framework;
- (3) Increase strategic use of IP assets and greater use of IP system for the protection of TK, GR and TCEs;
- (4) Facilitate transfer of technology;
- (5) Improve access to the results of innovation and creativity;
- (6) Strategic participation in the international IP system; and
- (7) Incentives to encourage innovation and creativity.

The policy connected with each of the seven strategic objectives is described in detail below.

(1) Develop a balanced and development-oriented IP laws and regulations

IP laws and regulations embody a range of trade-offs between private rights and interests, such as corporate and individuals' interest in fair return and the public interest in continuous innovation and creativity, cultural promotion and preservation as well as access to all IP related products and services. The role of the Government is to develop a regulatory framework that encourages and facilitates creative and innovative activities by assuring fair returns to innovators and creators and at the same time promotes access to quality products and services thereby contributing to sustainable economic development, progress and improvement in living standards.

The RGoB shall:

- (a) Conduct gap analysis of the existing IP and other IP related laws and regulations, and develop or amend these laws to meet the development needs of the country, taking into account the national and international imperatives and public interest flexibilities such as in the areas of health, education and environment.
- (b) Ensure that the rights granted and the enforcement powers are balanced with the interests of third parties, such as competitors and consumers.
- (c) Ensure that the IP system takes into account Bhutan's international commitments of various IP treaties.

(2) Establish an effective institutional framework

The management and administration of IP is a complex and dynamic task. It requires a system of both physical and

technological infrastructure. Skilled and trained human resources are required not only on technical matters of IP but also on administration, Information and Communications Technology (ICT), research and policy. The role of the Government is to establish an effective institutional framework to ensure that policy, strategies, action plans and activities are systematically implemented, using both international and national best practices.

The RGoB shall:

- (a) Prepare a strategy for modernization and enhancement of the IP administration.
- (b) Prepare action plans for the development of IP to establish the specific activities, responsibilities, coordination mechanisms and timelines to implement the strategic objectives.
- (c) Ensure that the IP office is adequately resourced and strategically placed within the system of Government.
- (d) Put in place an inter-ministerial mechanism to address the cross-cutting issues and to ensure effective implementation of strategies and action plans.
- (e) Establish a National IP stakeholder forum that brings together both stakeholders in the Government and in the private sector to engage on key policy issues.
- (f) Procure or offer capacity building and skills development for relevant agencies dealing with IP matters.
- (g) Develop a clear procedure for enforcement of IP rights through the involvement of IPR owners, managers, licensees and enforcement agencies.

(3) Increase strategic use of IP assets and greater use of IP system for the protection of TK, GR and TCEs

In order for the IP system to facilitate and support various development imperatives that are spelt out in the Constitution, Bhutan 2020: Vision for Peace, Prosperity and Happiness and EDP 2016; the Biodiversity Act of Bhutan, 2003 and the Access and Benefit Sharing (ABS) Policy of Bhutan, 2015 the Government will ensure that the IP system and IP assets are accessible and affordable to the largest number of Bhutanese companies and individuals as well as foreign companies operating in the country and TK, GR and TCEs are protected from misappropriation at the national and international levels.

The RGoB shall:

- (a) Continue to raise awareness on fundamental issues relating to IP and its use among stakeholders to further increase the level of awareness in the country.
- (b) Compile database of all IP assets owned by the State, communities, companies and individuals and make it accessible to the public.
- (c) Utilize the international avenue to protect state emblems in terms of Article 6_{ter} of the Paris Convention for the Protection of Industrial Property.
- (d) Facilitate in developing criteria on how to commercialize state owned IP assets and equitable sharing of benefits and remuneration in using them.
- (e) Ensure that the use and exploitation of TK associated with GR is subject to the prior informed consent, mutually agreed terms and other requirements in line with the ABS Policy 2015.

- (f) Promote activities related to TK and TCEs, and the knowledge associated to them and pursue equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.
- (g) Compile database of TK, GR and TCEs owned by local communities and indigenous groups, state and independent TK holders for defensive protection against misappropriation.
- (h) Harmonize implementation of guidelines among the key agencies for grant of IP rights associated with TK, GR and TCEs.
- (i) Continue to engage at various international fora to develop legally binding international instrument(s) to protect TK, GR and TCEs.

(4) Facilitate transfer of technology

IP is becoming an increasingly important factor for facilitating transfer of technology. Bhutan is a net importer of technology and it is likely to remain the case at least for some time. To achieve its development goals, Bhutan will require increased transfer of appropriate technologies. The policy of the Government is to ensure that the IP framework is conducive for appropriate technology transfer.

The RGoB shall:

- (a) Establish Technology and Innovation Support Centers (TISCs) in relevant institutions to provide access to:
 - (i) Online patent and non-patent (scientific and technical) information;

- (ii) Industrial property-related publications; and
 - (iii) Information on technology commercialization.
- (b) Promote the development of collaboration or networks of enterprises with the Royal University of Bhutan and other institutions to engage in R&D and innovative activities.
 - (c) Assist and encourage the public research institutions to collect and disseminate appropriate technologies.
 - (d) Collaborate with international and national agencies to explore and introduce appropriate technologies.

(5) Improve access to the results of innovation and creativity

The IP system can effectively contribute to sustainable socio-economic development and improve the living standards, if the results of creativity and innovation are made available to its citizens. The role of the Government is to ensure a system that addresses anti-competitive and other practices that may lead to high price or scarcity.

The RGoB shall:

- (a) Ensure a system that addresses anti-competitive and other practices that may lead to high price or scarcity.
- (b) Act in public interest to improve pricing, availability and affordability of essential products and services.

(6) Strategic participation in the International IP System

One of the aims of Bhutan 2020: Vision for Peace, Prosperity and Happiness is to be a respected member of international community by engaging with both countries and international institutions. IP and trade matters are today one of the key areas of international policy discussion and cooperation. The Government will ensure to obtain maximum benefit from the international cooperation agreements and institutions while participating in policy processes that are most relevant to its priorities.

The RGoB shall:

- (a) Undertake an objective assessment regarding the benefits and costs prior to becoming a party to various international IP treaties.
- (b) Identify key international processes in which Bhutan's strategic interest are implicated, develop positions and allocate resources to ensure Bhutan's active participation.

(7) Incentives to encourage innovation and creativity

To encourage creativity and innovation in the country, the RGoB shall:

- (a) Provide incentives for the development of IP in line with the EDP 2016 and Fiscal Incentives 2016.
- (b) Make available other incentive schemes to encourage innovation and creativity in addition to those spelt out in EDP 2016 and fiscal incentives already put in place.

8. THE WAY FORWARD

The NIPP sets out the overall policy framework for IP development in the country. Based on the NIPP framework, following documents will be developed:

- (1) IP Development Strategy which sets out the strategies and measures for achieving the NIPP objectives and
- (2) Action Plan which sets out the activities, responsibilities, deadlines and resources for achieving the IP Development Strategy.

