

Draft

ROYAL GOVERNMENT OF BHUTAN



NATIONAL INTELLECTUAL PROPERTY POLICY

2015

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ACRONYMS

EDP	:	Economic Development Policy
FDI	:	Foreign Direct Investment
GI	:	Geographical Indication
GNH	:	Gross National Happiness
ICT	:	Information and Communication Technology
IP	:	Intellectual Property
IPD	:	Intellectual Property Division
IPR	:	Intellectual Property Right
LDC	:	Least Developed Country
NIPP	:	National Intellectual Property Policy
R&D	:	Research and Development
RGOB	:	Royal Government of Bhutan
RUB	:	Royal University of Bhutan
TISCs	:	Technology and Innovation Support Centers
WIPO	:	World Intellectual Property Organization

I. INTRODUCTION

The Intellectual Property (IP) system is one of the cornerstones of 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, technology for protection of environment, on protection of folklore and indigenous culture, and on other aspects of economic and social development.

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 Kingdom. Facilities for the registration of trademarks, industrial designs and patent were put in place in 1997, 2009 and 2012 respectively. The Industrial Property Regulations 1997 was superseded by Industrial Property Act of the Kingdom of Bhutan 2001 and Copyright Act of the Kingdom of Bhutan 2001.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 programs 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 wellbeing of the society. However, the development of 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 programs, 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, the principle of Gross National Happiness (GNH) and the aspirations set out in Bhutan 2020: Vision for Peace, Prosperity and Happiness and the Economic Development Policy 2010 (EDP 2010).

II. GUIDING FRAMEWORK

The NIPP is based on key guiding principles reflected in the Constitution, important RGoB documents and international IP Treaties and Conventions to which Bhutan is a signatory:

- Constitution of the Kingdom of Bhutan
- Bhutan 2020: Vision for Peace, Prosperity and Happiness
- GNH Development Philosophy
- EDP 2010
- International IP Treaties and Conventions

III. VISION

A balanced IP system that encourages and facilitates creative and innovative activities by assuring fair returns to innovators and creators and that promotes access to quality products and services thereby contributing to sustainable economic development, progress and improvement of living standards in Bhutan.

IV. MISSION

- Empower Bhutanese citizens by creating a conducive environment for economic opportunities;
- Ensure that IP contribute to socio-economic development alongside with other government policies;
- Interface with new emerging issues in the area of IP;
- Stimulate creativity, innovation and inventive activities; and
- Improve and strengthen IPRs enforcement mechanism.

V. 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.

VI. CONTEXT

IP consists mainly of two branches, one being Industrial Property dealing with technological inventions, utility models, trademark for goods and services, industrial designs etc.; the other being Copyright, which protects literary and artistic 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 Intellectual Property Rights (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 economic, social 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 Intellectual Property Division (IPD)'s mandate:

i. 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.

ii. IP Administration

The IPD has been entrusted with the responsibility of registration and administration of IP in the country. It is currently made up of four registries namely:

- The Copyright Office
- The Trademarks Registry
- The Industrial Designs Registry
- The Patents Registry

iii. Awareness and use of IP

The IPD 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 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 wilfully infringe the rights of others. The low levels of awareness and use of the IP system in Bhutan demand extensive IP awareness campaign for both users and owners as well as for the enforcement agencies.

iv. 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.

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

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.

VII. NATIONAL INTELLECTUAL PROPERTY POLICY

The NIPP comprises of the following seven strategic objectives:

1. Development of a balanced and development-oriented IP laws and regulations;
2. Establishment of an effective institutional framework;
3. Increased strategic use of IP assets;
4. Facilitating transfer of technology;
5. Improved access to the results of innovation and creativity;
6. 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 discussed in detail below.

1. Development of 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 goods and services. The role of the government is to develop a regulatory framework that encourage and facilitate 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 standard.

The RGoB shall:

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

2. Establishment of 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 Communication Technology (ICT), research and policy. The role of the government is to establish an effective institutional framework to ensure that policy, strategies, action plans, etc. are systematically implemented, using both international and national best practices.

The RGoB shall:

- 2.1. Prepare a strategy for modernization and enhancement of IP administration.
- 2.2. Prepare Action Plans for the development of IP to establish the specific activities, responsibilities, coordination mechanisms and timelines to implement the strategic objectives.
- 2.3. Ensure that IP office is adequately resourced and strategically placed within the system of government.
- 2.4. Put in place an inter-ministerial mechanism to address the cross-cutting issues and to ensure effective implementation of strategies and action plans.
- 2.5. 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.
- 2.6. Procure and/or offer capacity building and skills development for relevant agencies dealing with IP matters.
- 2.7. Develop a clear procedure for enforcement of IP rights through the involvement of IPR owners, managers, licensees and enforcement agencies.

3. Increased strategic use of IP assets

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 2010, the government will ensure that 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 Kingdom.

The RGoB shall:

- 3.1. Continue to raise awareness on fundamental issues relating to IP and its use among stakeholders to further increase the level of awareness of IP in the Kingdom.
- 3.2. Compile database of all IP assets owned by government, companies and individuals and make it accessible to the public.
- 3.3. Facilitate in developing criteria on how to commercialize state owned IP assets.
- 3.4. Utilize the international avenue to protect State emblems in terms of Article 6^{ter} of the Paris Convention for the Protection of Industrial Property.

4. Facilitating 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:

- 4.1. Establish Technology and Innovation Support Centers (TISCs) in relevant institutions to provide access to:
 - Online patent and non-patent (scientific and technical) information;
 - Industrial property-related publications; and
 - Information on technology commercialization.
- 4.2. Promote the development of collaboration/networks of enterprises with the Royal University of Bhutan and other institutions to engage in Research and Development (R&D) and innovative activities.
- 4.3. Assist and encourage the public research institutions to collect and disseminate appropriate technologies.
- 4.4. Collaborate with international and national agencies to explore and introduce appropriate technologies.

5. Improved access to the results of innovation and creativity

The IP system can effectively contribute to sustainable socio-economic development and improve the living standard, 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:

- 5.1. Ensure a system that addresses anti-competitive and other practices that may lead to high price or scarcity.
- 5.2. 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:

- 6.1. Undertake an objective assessment regarding the benefits and costs prior to becoming a party to various international IP treaties.
- 6.2. 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 creativity and innovation in the country

The RGOB shall:

- 7.1. Provide incentives for the development of IP in line with the EDP 2010 and Fiscal Incentives 2010.
- 7.2. Will make available other incentive schemes to encourage innovation and creativity in addition to those spelt out in EDP 2010 and fiscal incentives already put in place.

VIII. THE WAY FORWARD

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

- a. IP Development Strategy which sets out the strategies and measures for achieving the NIPP objectives and
- b. Action Plan which sets out the activities, responsibilities, deadlines and resources for achieving the IP Development Strategy.

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