

CIS Comments on the Draft National Policy on Electronics

Centre for Internet and Society | 2011-10-31

Pranesh Prakash

These were the comments submitted by CIS to the request for comments put out by the Department of Information Technology on its draft 'National Policy on Electronics'.

The Department of Information Technology must be commended for taking the initiative to create this policy which aims to reduce India's dependence on other countries for crucial electronic hardware requirements, and to increase Indian production to such a capacity as to not only serve India's increasing demand for electronics, but to fulfil foreign demand as well.

We have mainly focused our comments on the implications of the patent regime on this laudable goal.

Technology Transfer

An area that the policy is silent on is technology transfer. In relation to technology, the main bargain embedded in the Trade-Related Intellectual Property Rights (TRIPS) Agreement of the WTO was the increase in the level of protection offered under patent laws of developing countries in exchange for increased transfer of technological know-how from the developed countries. While India has increased patent protection in accordance with the TRIPS Agreement, there has been no commensurate transfer of technology from countries which are currently hubs of electronics know-how.

One important example is China's policy on transfer of technology along the whole value chain to enable domestic firms to gain technological expertise.

The Association of American Manufacturing notes, "One of the most potent weapons China has used to move up the value chain is forced technology transfer ... It is only through the acquisition (rather than internal development) of sophisticated technologies that Chinese companies have been able to rapidly enter and expand in sophisticated industries"

This insistence on technology transfer as a national policy has served China well, and their experience should be incorporated into India's National Policy on Electronics. This is not to say that India should not internally develop our own technological capabilities, but that the Indian government must use the

policy space available to it to ensure that acquisition of technological capabilities happens alongside.

Outflow of Foreign Exchange as Royalties Creating Adverse Balance of Payments

The latest data from the World Bank shows that our balance of payments is increasing adversely at an alarming rate, and has now reached over USD 2.38 billion.

Our royalty and licence fee payments have kept on increasing at an astounding rate.

Table: India's royalty and licence fees payments (current USD)

1991	2006	2007	2008	2009	2010
49,565,208	845,949,4361	159,824,3911	528,826,9131	860,283,8082	437,500,663

Meanwhile India's income is gaining slowly and erratically, and in 20100 reached USD 59.6 million.

Table: India's royalty and licence fees, receipts (current USD)

1991	2006	2007	2008	2009	2010
615,525	13,445,053	30,690,000	27,211,957	38,128,141	59,560,687

This bleeds the Indian economy through a very inefficient outflow of capital. Insisting on transfer of technology is an important component in slowing down this trend.

Linking of Value Chain and Preferential Treatment

One important clarification that is needed in the policy (specifically clause IV.1.3) is that "domestically manufactured electronic products" is intended to mean not those products for which the last part of value has been added in India. This way essentially non-Indian products with Indian branding can be seen to be "domestically manufactured electronic products". The longer the Indian part of the value chain, the more preference it should be given, and holding by Indian companies of essential patent rights (or the availability of greater number of components of the product under royalty-free, FRAND and RAND licences) could be an important criteria. This will also encourage the transfer of technological know-how to Indian firms.

Preferential Treatment

Some may argue that the provision of preferential treatment to domestic manufacturers contravenes the GATT Agreement, however the GATT Agreement itself provides a usable exception in Article 3(8):

Article III: National Treatment on Internal Taxation and Regulation

8 (a) The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

(b) The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

Thus, by crafting any further regulation under this policy to fit within this exception, India would not fall afoul of its obligations under GATT.

Cybersecurity and Source Code

An important aspect of the cybersecurity that is discussed in clause IV.5 is the ability to validate the lack of malicious code in the electronics used in strategically important infrastructure. For this, manufacturers must be required to provide the source code as part of government tenders in strategically important infrastructure.

Distinction between Innovation and Intellectual Property

The Electronic Development Fund must seek to promote innovation, research and development, and commercialization of products, and must be used to strategically acquire patents. Promotion of patents is not an end in itself, unlike promotion of innovation and ensuring that research and development reaches markets through commercialization. Patents are only a means to an end, and may sometimes be strategically useful, and often stand in way of gaining optimal use of technology by markets due to their monopolistic nature. Thus, it is recommended that “promotion of IP” be dropped from this clause, and instead “promotion of strategic acquirement and use of patents” be substituted in its place.

National Electronics Mission

The National Electronics Mission should not only have industry participation but also participation from academia and civil society.

Funding

The issue of funding for the initiatives outlined in this policy must be addressed as well.