



सत्यमेव जयते

DEPARTMENT FOR PROMOTION OF
INDUSTRY AND INTERNAL TRADE
MINISTRY OF COMMERCE & INDUSTRY,
GOVERNMENT OF INDIA

Intellectual Property Rights Regime in India: Government Policies and Practices

Rajiv Aggarwal
Joint Secretary

Department for Promotion of Industry and Internal Trade
Ministry of Commerce & Industry, Government of India

Venue: National Judicial Academy, Bhopal

Date: 22nd March 2019

National IPR Policy and Achievements



National Intellectual Property Rights Policy 2016

7 Objectives

- IPR Awareness: Outreach and Promotion
- Generation of IPRs
- Legal and Legislative Framework
- Administration and Management
- Commercialization of IPR
- Enforcement and Adjudication
- Human Capital Development



Vision document to encompass all IPRs



To create and exploit synergies between all IPs



Institutional mechanism for implementation, monitoring & review: 170 action points- nodal departments



Incorporating and adapting global best practices



Cell to facilitate the creation and commercialization of IP assets



Judicial and Administrative Setup



Judicial

- Commercial Courts
- Intellectual Property Appellate Board
- Copyright Board (merged in IPAB)
- ADR

Centre and State



- **IP Cells**
- **TISCs**
- **Patent Facilitation Centres**



IP Offices

- **Patents: Kolkata, Delhi, Chennai, Mumbai**
- **Trademarks: All 4 + Ahmedabad**
- **Copyrights: Delhi**
- **Designs: Kolkata**
- **Geographical Indications: Chennai**
- **SICLDR: Delhi**

Enforcement



- **Police**
- **Customs**



IP Synergy and Augmentation of Manpower

- Administration of Copyright Act, 1957 and Semiconductor Integrated Circuit Layout-Design Act, 2000 transferred to DPIIT.
- Copyright Board merged with the Intellectual Property Appellate Board (IPAB) under the Finance Act, 2017.
- Technical Manpower augmented manifold both in the Patent office and Trademarks registry: major impact on pendency of IP applications.
- Copyright Office shifted to IP Office, Dwarka.



IP Process Re-engineering: Patent & Trademark Rules Amended

PATENT RULES

- Refund of RQ fees, as also withdrawal of application without any fees
- Applications can be transferred electronically from one Patent Office branch to another
- Expedited Examination on certain grounds: startups/ selecting India as ISA/ IPEA

COMMON FEATURES

- Hearing through video conferencing
- Timelines imposed for speedy disposal – No. of adjournments limited
- Special provisions for start-ups

TRADEMARK RULES

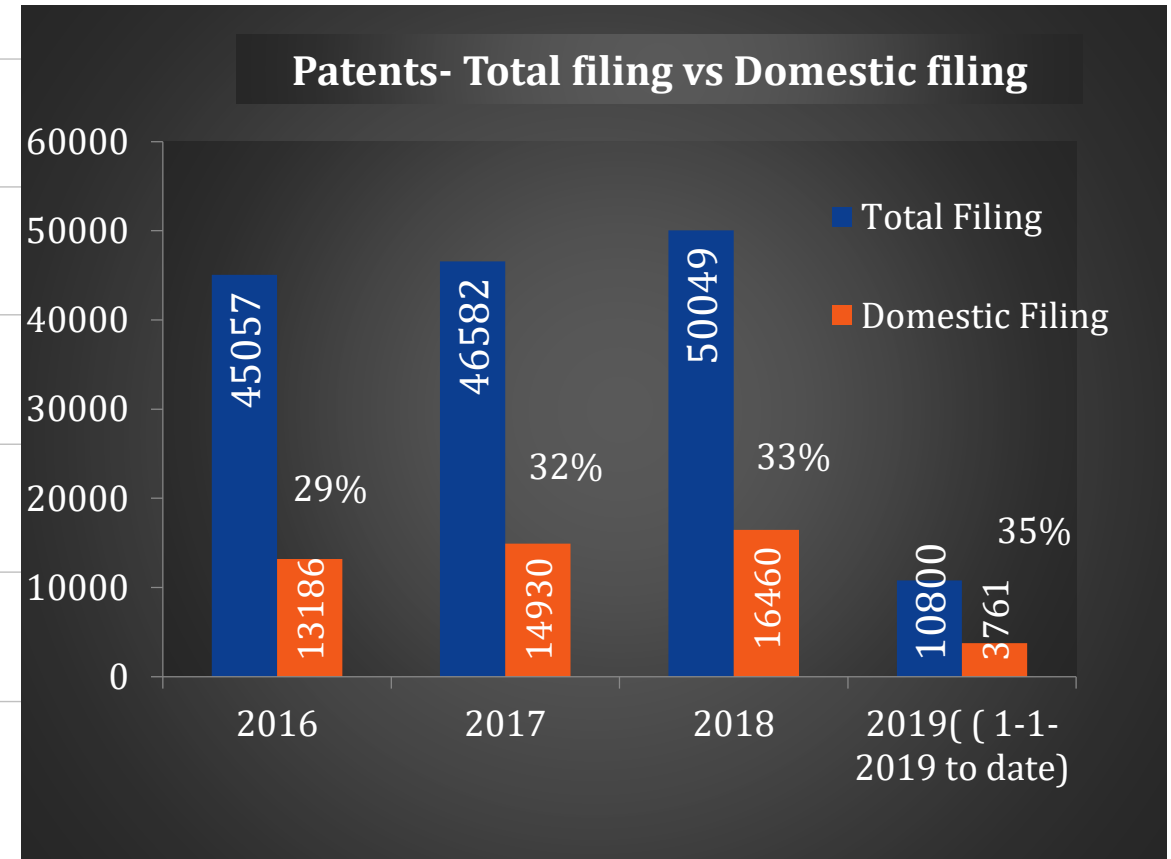
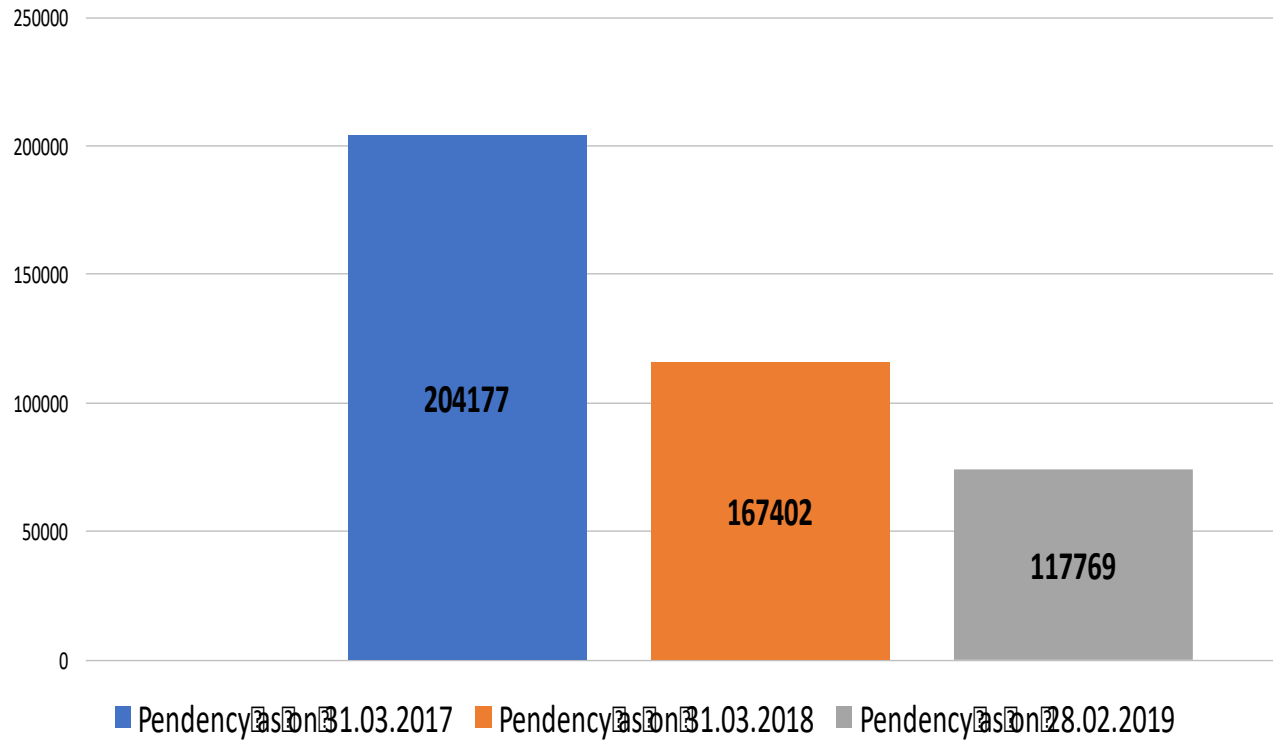
- Process for determination of well-known mark laid out
- 74 existing forms replaced by 8 consolidated forms
- Express provision for filing applications for sound marks
- E-filing encouraged through 10% rebate in fees
- Email recognized as Mode of Service
- Expedited processing of an application right up to registration stage

**SIMPLIFIED &
STREAMLINED
PROCESSES**



Patents on fast track – Reduction in Pendency

Reduction in Pendency- Examination

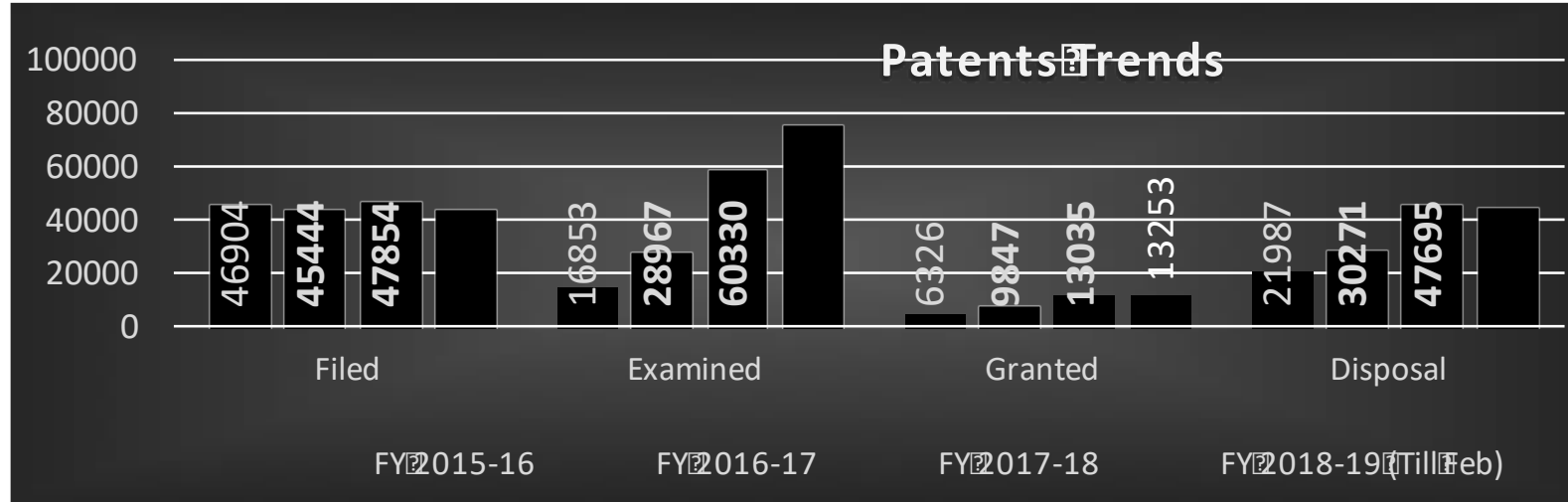


Highlights (2016 till date)

- More than 90% e-filing of Patent Applications
- Hearing through video conferencing: 4,628
- Withdrawal of patent applications: 10,892



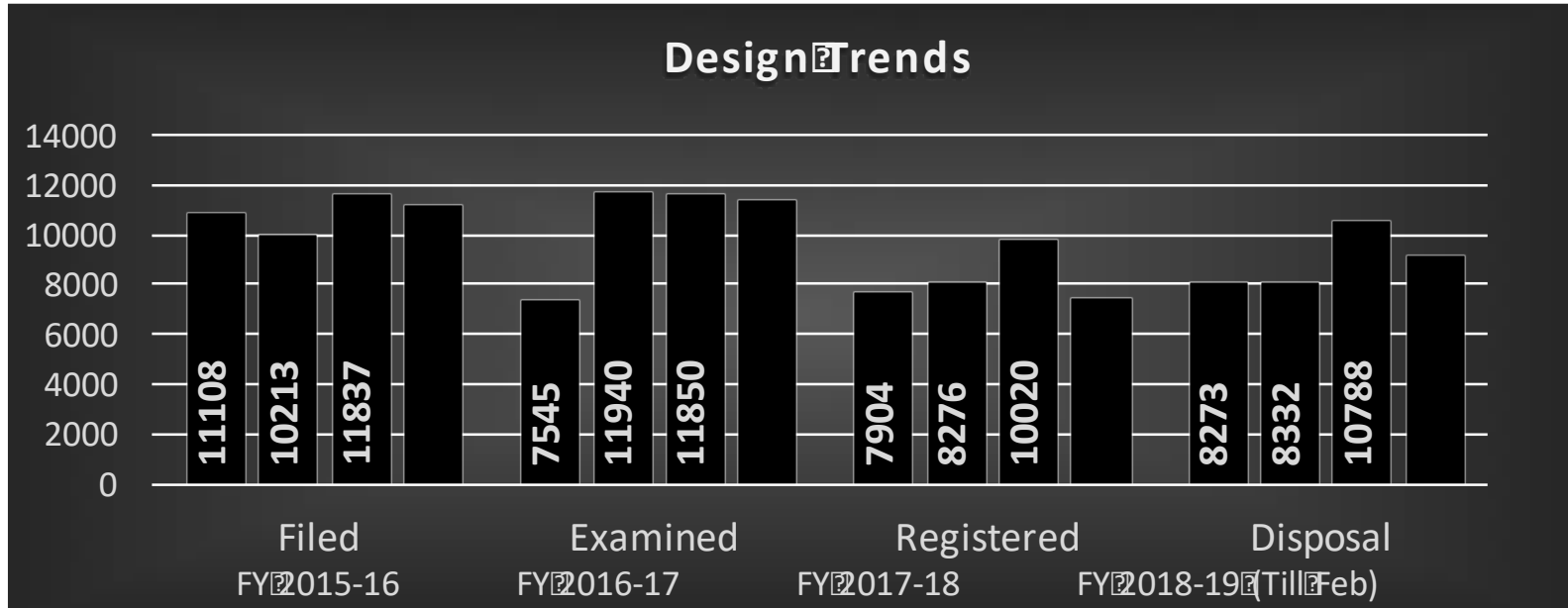
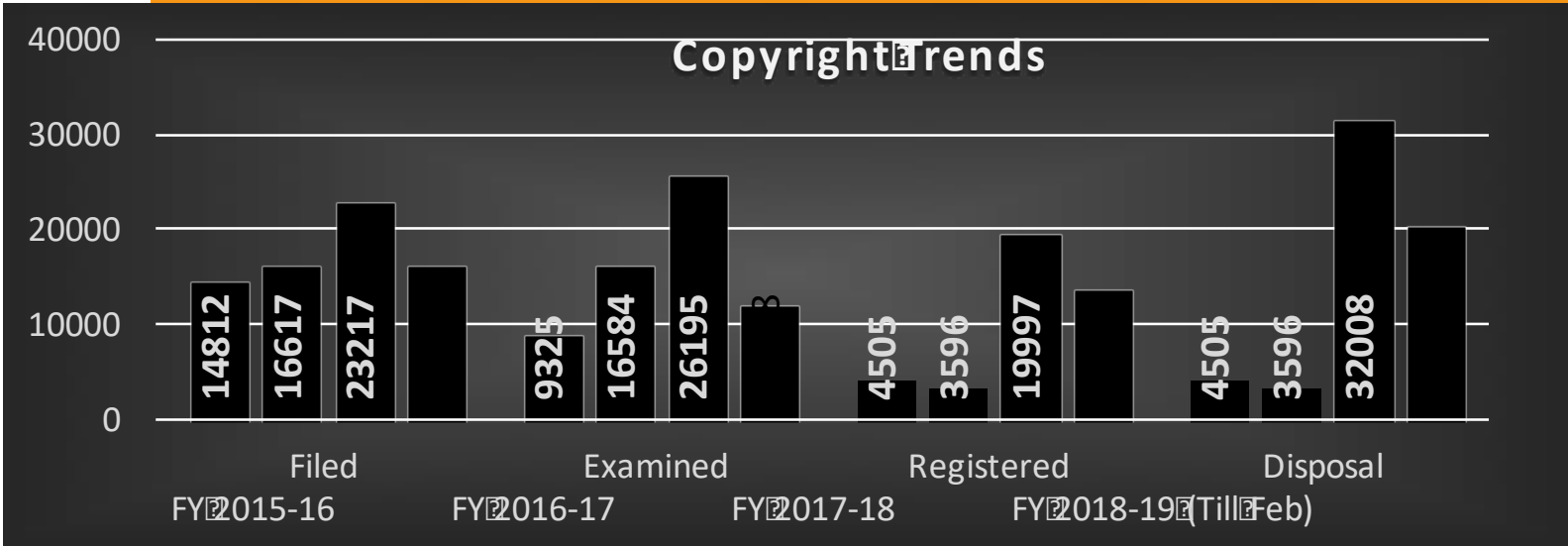
Patents & Trademarks



- Examination of patent applications up 5 times to 77555 till Feb'19 (vs 2015-16).
- Disposal of patents up 2½ times and TM up 4 times.
- Drop in TM examination in 2017-18 due to elimination of pendency; time taken for examination now just 1 month from earlier 13 months.
- Acceptance of over 40% Trademarks at the first instance of examination itself, vis-à-vis just 7% earlier.



Copyrights & Designs



- C/R and design applications examined within a month.
- Registration of C/R gone up by over 5 times in 2017-18 vis-à-vis 2016-17.
- Disposal of C/R gone up by almost 9 times in 2017-18 vis-à-vis 2016-17.
- Design application examinations up by 65% in 2018-19 vs 2015-16.
- The target is to maintain the pendency of examination under a month.



IPRs and Startups

50% rebate in Trademark fees

80% rebate in Patent fees

Expedited examination of patent applications

Scheme for facilitating Startups Intellectual Property Protection (SIPP)	Can be availed by startups recognised under Startup India Initiative
	For Patent, Trademark and Design filings, cost of facilitators borne by GoI
	Only statutory fees borne by startups

Expedited examination of patent applications	Applicable for Startups and applicants who have selected India as ISA/ IPEA
	1826 patent and 2802 trademark applications filed by startups
	103 Patents granted to startups; Fastest patent granted within 93 days from the date of request for examination



IP Awareness

IP Awareness Program launched by CIPAM in schools, colleges, industry etc. with aim to recognise one's own IP, as also respect for others' IP.

More than 1,00,000 students made aware of IP using Satellite Technology. Awareness programs also conducted at schools and colleges located in far flung areas.

IPRs included in NCERT curriculum of commerce.

India's first IP Mascot "IP Nani" launched.

ToTs for school teachers organized in collaboration with National Institute of Open Schooling; also with JNVs, KVs, CBSE, APS etc. in

More than 50 workshops organized in February and March, 2019 in various MSME clusters across India.

6 Technology and Innovation Support Centres (TISC) established with WIPO.



Sensitization of Enforcement Agencies & Judiciary

Constant efforts made by the Department to strengthen IP Enforcement ecosystem in country.

IPR Enforcement workshops conducted for Police officials pan India on regular basis; 44 workshops conducted so far in collaborations with various state police departments.

Advisory issued by the MHA for training of police officials on enforcement of IPRs.

IPR Enforcement toolkit as ready reckoner to assist police officials in dealing with IP Crimes, especially Copyright Piracy and Trade Mark Counterfeiting.

IPR Enforcement workshops also conducted for custom officials, including at ports.

National Judicial Academy conducts training programmes for judiciary: modules on IPRs included in workshops organized by NJA.



Trade Related Aspects of Intellectual Property Rights (TRIPS) and Doha Declaration

Bedrock of Indian IP Regime

Effective from 1st January 1995

Most comprehensive multilateral agreement on IP to date

Minimum standards agreement: Members may provide a more extensive protection of IP, if they wish to do so

Members free to determine appropriate methods of implementing within the ambit of their own legal system

Doha Declaration on Public Health to be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all



Recent International Engagements

WPPT

WCT

Marrakesh
Treaty

Vienna
Agreement

Locarno
Agreement

NICE
Agreement

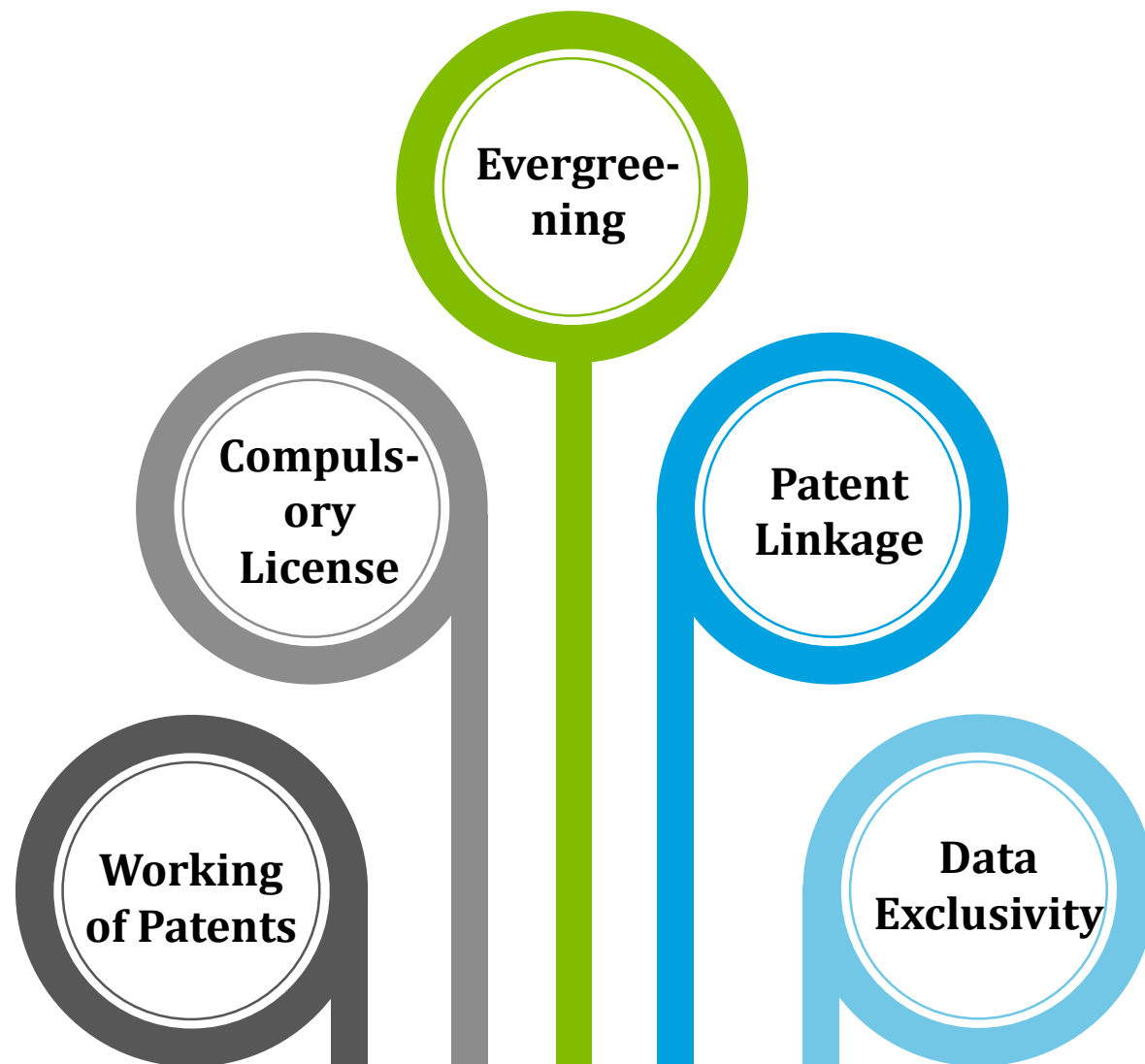


Civil & Criminal Remedies under IP Legislations

S. No.	Act	Civil Remedy	Criminal Remedy
1	The Copyrights Act, 1957	✓	✓
2	The Trade Marks Act, 1999	✓	✓
3	The Patents Act, 1970	✓	✗
4	The Designs Act, 2000	✓	✗
5	Semiconductor Integrated Circuits Layout Design Act, 2000	✓	✓
6	The Geographical Indications of Goods (Registration & Protection) Act, 1999	✓	✓
7	The Protection of Plant Varieties and Farmer's Rights Act, 2001	✓	✓
8	The Biological Diversity Act, 2002	✓	✓



Patents- Key Issues





Evergreening

Section 3(d) of the Patents Act, 1970- to prevent 'evergreening' of patents

Extension of life of a patent over products that are about to expire on account of minor and incremental improvements in the invention, or a new form of known substance.

Salts, esters, ethers, polymorphs, etc. of known substance are considered to be same substance until these differ significantly in properties w.r.t. efficacy.

Similar provisions in other jurisdictions– US, Philippines, Argentina, Mexico, Japan, European Patent Office.

Section 3(d) Widely hailed- WHO Public Health, Innovation and Intellectual Property Rights Report of 2006 and United Nations Secretary-General's High-Level Panel on Access to Medicines Report, 2016

SC in Novartis AG Vs. Union of India (UOI) and Ors –The Apex Court stated “efficacy in case of a medicine can only refer to ‘therapeutic efficacy’”



Compulsory Licenses

Compliant with Article 31 of the TRIPS agreement and Article 15 of the Paris Convention.

Section 84 empowers the Controller of Patents to grant a CL.

Section 92 provides for CL on notifications by Central Govt on certain grounds

Not available to public at a reasonably affordable price:

Did not meet the reasonable requirements of the public

Did not work the patent commercially

Section 92A provides for export of patented pharmaceutical products.

Section 100- Power of the Central Government to use inventions for purposes of Government.

Compulsory Licenses issued in other jurisdictions, namely: USA, Germany, Canada, Italy, Indonesia

United Nations Secretary-General's High-Level Panel on Access to Medicines Report, 2016 recommends that Governments should adopt and implement legislation that facilitates the issuance of CLs



Compulsory License- Nexavar Case

Patent granted to M/s Bayer Ltd, USA in India on 3rd March, 2008.

M/s NATCO Pharma, an Indian Pharmaceutical Company, applied to M/s Bayer Ltd for a voluntary license to produce drug, which was not accepted.

M/s NATCO Pharma applied to the Controller of Patents for Compulsory License under Section 84 of the Patents Act on 29th July 2011.

The Controller, by his order dated 9th March, 2012, granted compulsory license to M/s NATCO Pharma Ltd under section 84 of the Indian Patents Act, 2005.

IPAB upheld decision of Controller vide its order dated 4th March, 2013. Royalty fixed by Controller of Patents at 6% of net sales (the maximum as per UNDP recommendations); enhanced to 7% by IPAB.

The Hon'ble High Court of Bombay, vide order dated 15th July, 2014, upheld the order of IPAB.

The Hon'ble Supreme Court of India, by order dated 12th December, 2014, declined to interfere in the case and dismissed the SLP, keeping all questions of law open.



Working of a Patent

Article 27 (1) of TRIPS prohibits discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

Section 83 of Patents Act, 1970- Intent to ensure that inventions patented are commercially worked in India to the fullest extent within a reasonable time

Details of working under Section 146 of the Patents Act –

Every patentee and every licensee shall furnish information periodically whether patented invention has been commercially worked or not on **Form 27**

Bombay High Court Judgement: Nexavar case-

Clarified circumstances where working may also be considered by import.



Data Exclusivity

Article 39.3 of the TRIPS relates to the 'data protection' when data pertinent for seeking approval of the authority is shared with the marketing regulator – different from data exclusivity

Data Exclusivity - non-reliance by the regulator on this data submitted for according marketing approvals to another applicant

Data exclusivity provisions will impact access to medicines

TRIPS - non-disclosures of data by the market regulator

A TRIPS plus provision

Stand endorsed-United Nations Secretary-General's High-Level Panel on Access to Medicines Report, 2016;
Data Exclusivity is a TRIPS-plus provision.



Patent Linkage

TRIPS-Plus measure; undesirable – will delay introduction of generics

No provision in Acts to link patent rights to marketing approvals for product.

The Drugs and Cosmetics Act does not require the Drug Controller General of India (DGCI) to see whether a patent exists on a drug for which an application seeking marketing approval has been received, nor is he empowered to do so.

Patent rights are private rights - enforcement by interested parties through civil courts-Cannot be enforced suo-moto by a public authority

TRIPS - non-disclosures of data by the market regulator:

Stand endorsed-United Nations Secretary-General's High-Level Panel on Access to Medicines Report, 2016, Data Exclusivity is a TRIPS-plus provision.

High Court in 'Bayer Corporation & Anr v. Union of India & Ors' categorically held that patent linkages cannot be read into existing Indian law.



Patents vs Plant Varieties

Plant Varieties protected by sui generis legislation in India

Patent in gene technology - whether subsumed in plant variety when embedded in seed-

Seeds not patentable subject matter under section 3(j) of the Patents Act, 1970

Licensing Guidelines on GM Technology Agreements- impact on patents if notified



Standard Essential Patents (SEP)

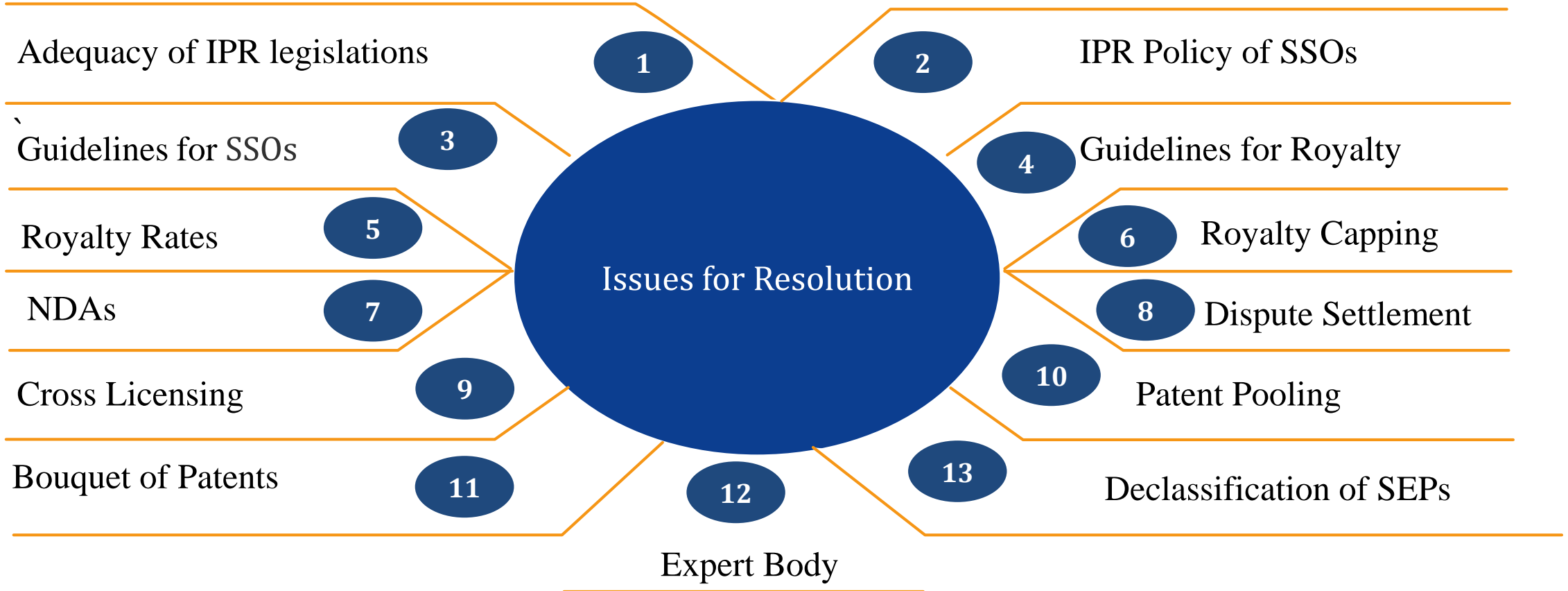
A patent is essential to a standard, if use of the standard requires infringement of that patent

Relevant standards set out by Standard Setting Organizations (SSOs)

To promote application of the standard and to avoid any anti-competition concerns, such licenses must be made available under Fair, Reasonable and Non-Discriminatory (FRAND) terms



Issues for Resolution in SEPs





Border Measures

Under Section 156 of the Customs Act, 1962, border measures implemented through IPR (Imported Goods) Rules, 2007.

High Court in LG Electronics India Ltd. Vs. Bharat Bhogilal Patel & Ors held

“the custom authority is an implementing authority which will only act consequent upon the orders of the court and cannot keep on interdicting with the consignments and proceed to adjudicate the infringement claims.”

Recently amended by the Government to exclude patents



Well Known Marks

Section 2(1)(zg) of Trade Marks Act 1999 provides the definition of Well-known trade mark in relation to any goods or services.

Provision for registration of Well-known trade mark given in Section 11 of Trade Marks Act 1999, but till March 2017 no procedure was prescribed in Rules.

For the first time, the procedure for registration of well known mark provided under the Rule 124 of the Trade Marks Rule 2017. Any person may, through Form TM-M with requisite fee, request the Registrar for determination of a trademark as well-known.



Anti-Counterfeiting Provisions in draft E-Commerce Policy

Seller details should be made available on marketplace website for all products: full name of the seller (name of legal entity), address and contact details, including email and phone number.

Sellers must provide an undertaking to the platform about genuineness of products they are selling and the same must be made accessible to consumers.

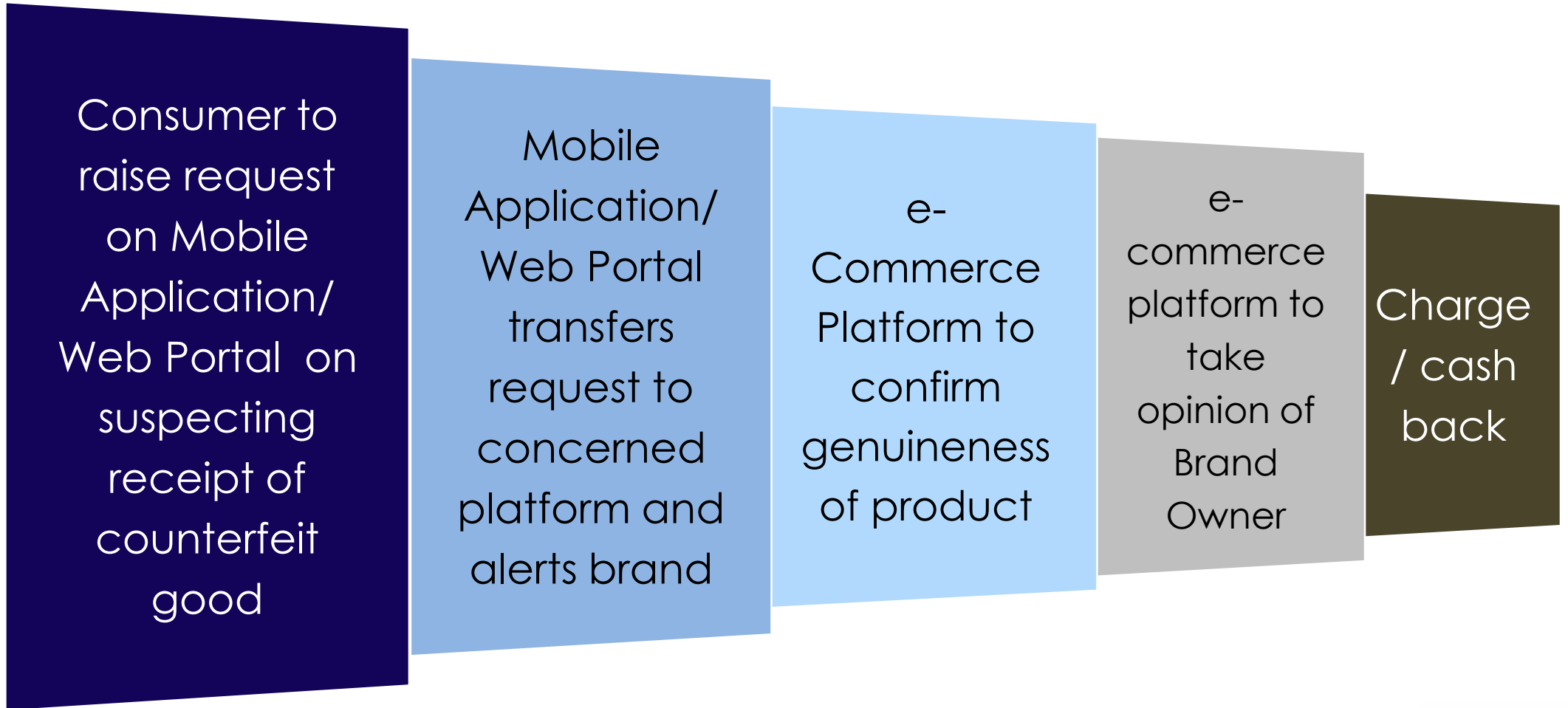
Trade mark (TM) owners be given option to register themselves with e-commerce platforms. Whenever a TM product is uploaded for sale, the platform shall notify the respective TM owner.

If a Trademark owner so desires, e-commerce platforms shall not list/ offer for sale, any of the owners' products without prior concurrence.

In case of specified high value (luxury) goods, cosmetics or goods having impact on public health, marketplaces required to seek TM owner's authorization before listing the product.

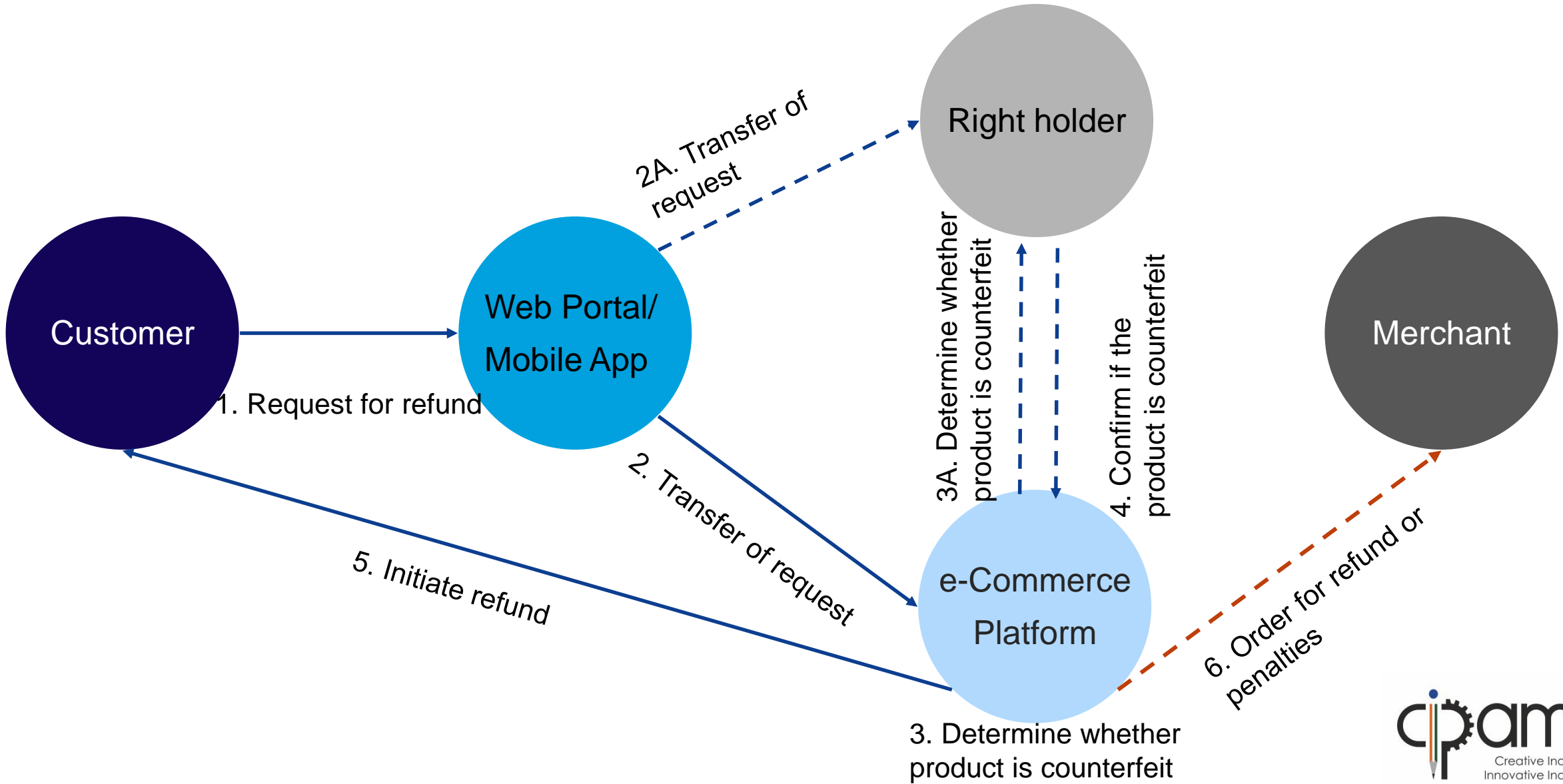


Project Cashback: Working of the Scheme





Workflow

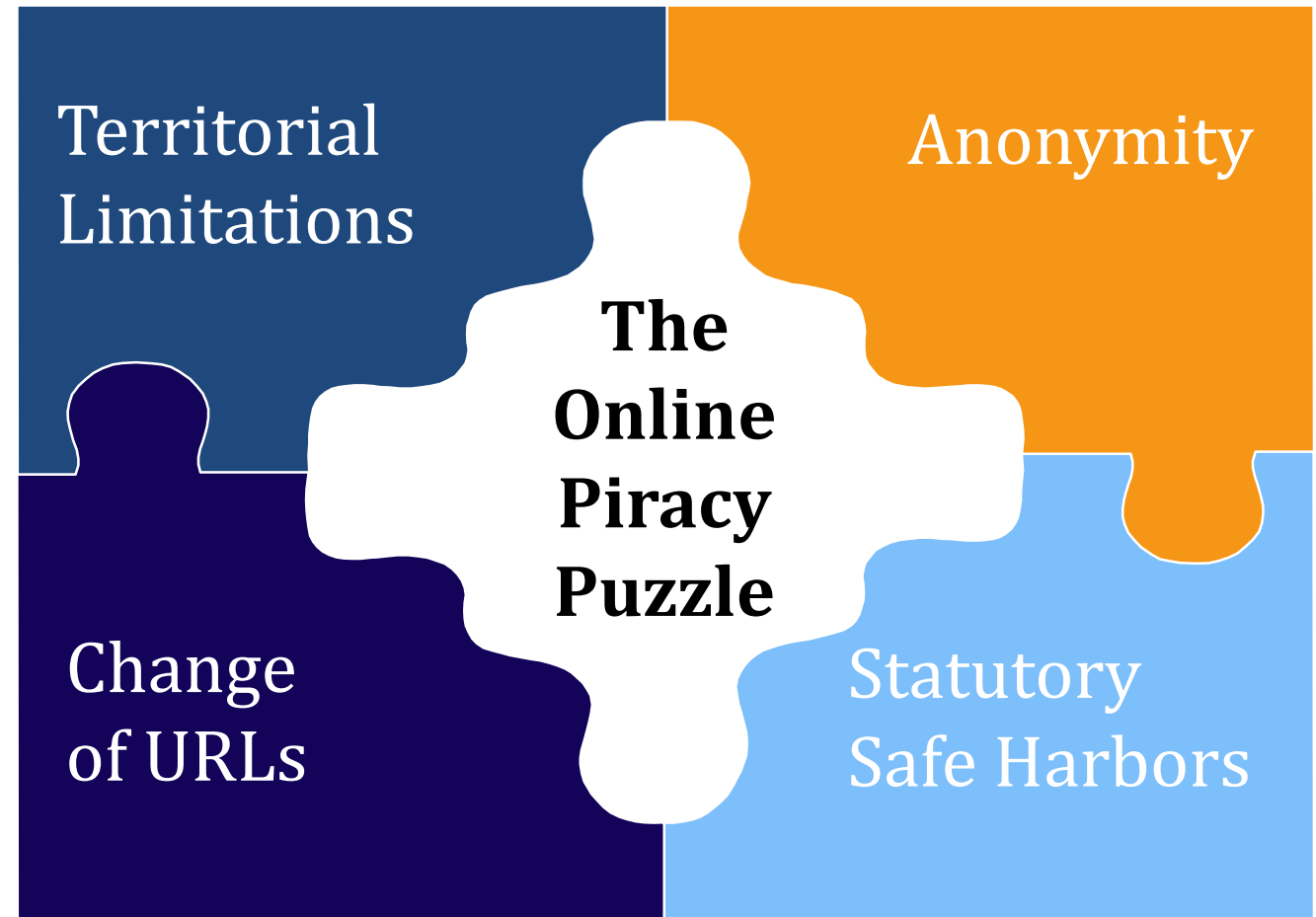




Online Copyright Piracy: Enforcement Issues

There are a number of intricacies involved in taking enforcement action against online copyright piracy

CIPAM working closely with NIXI to combat piracy on .IN domain



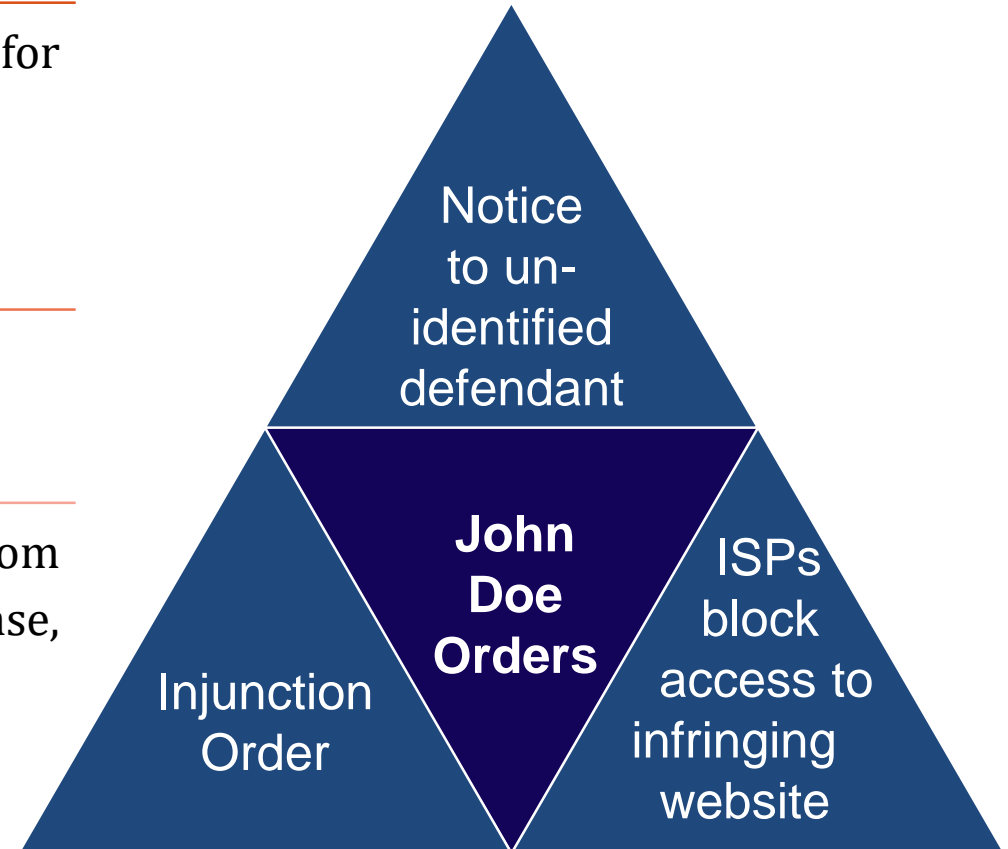


John Doe Orders

John Doe orders emerged as an effective judicial remedy for protecting copyrighted material online

Restraining order against unknown defendants

Orders prohibit all known and unknown defendants from communicating, making available, displaying, release, uploading and downloading copyrighted work





Voluntary Mechanisms required to Combat Piracy

Search Engines: Rogue websites hosting primarily pirated content shall not appear in the initial pages of search result.

Advertisement Agencies: Advertisement is a major source of revenue for websites promoting pirated content. Prohibiting advertisement will be a major blow on the revenues of such websites.

Payment Gateways: Voluntarily restricting payments to rogue websites by the payment gateways will help in reduction of transactions done on rogue websites.

ISPs: Internet Service Providers (ISP) to take down rogue websites; block access to Indian markets for foreign hosted websites.

Domain Registries: Most of the pirated websites don't provide their correct credentials and address details (WHOIS or KYC); such sites can be identified and blocked.



Anti Piracy

Anti-Piracy video campaign has been launched with film stars such as Mr. Amitabh Bachchan, Ms. Vidya Balan, Mr. Ranbir Kapoor amongst others pitching against piracy. Videos are being played in various cinema halls.

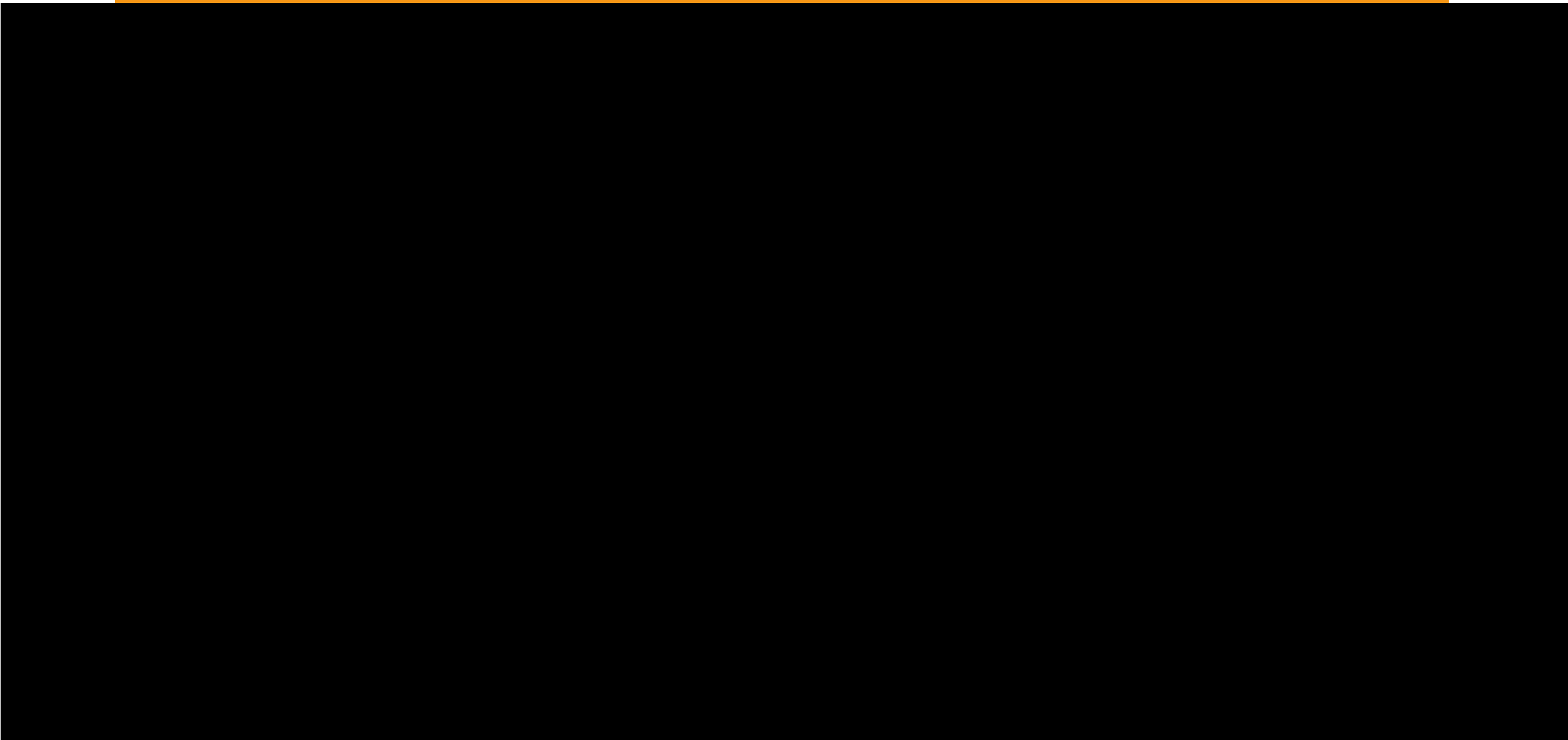
CIPAM in collaboration with NIXI and Maharashtra Cyber and Digital Crime Unit (MCDU): 235 infringing websites suspended on basis on incomplete KYC details.

In order to check film piracy at source, Cinematograph (Amendment) Bill, 2019 introduced in parliament: penal provisions against illegal recording of films in cinema halls.

Provisions regarding Internet Watch List for tackling piracy in collaboration with industry proposed in draft e-commerce policy.



Antipiracy video by Mr. Amitabh Bachchan





THANK YOU !
