

ONLINE CHAT • GLOBAL BUSINESS OPPORTUNITIES • TRADEWINDS

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FIEO NEWS

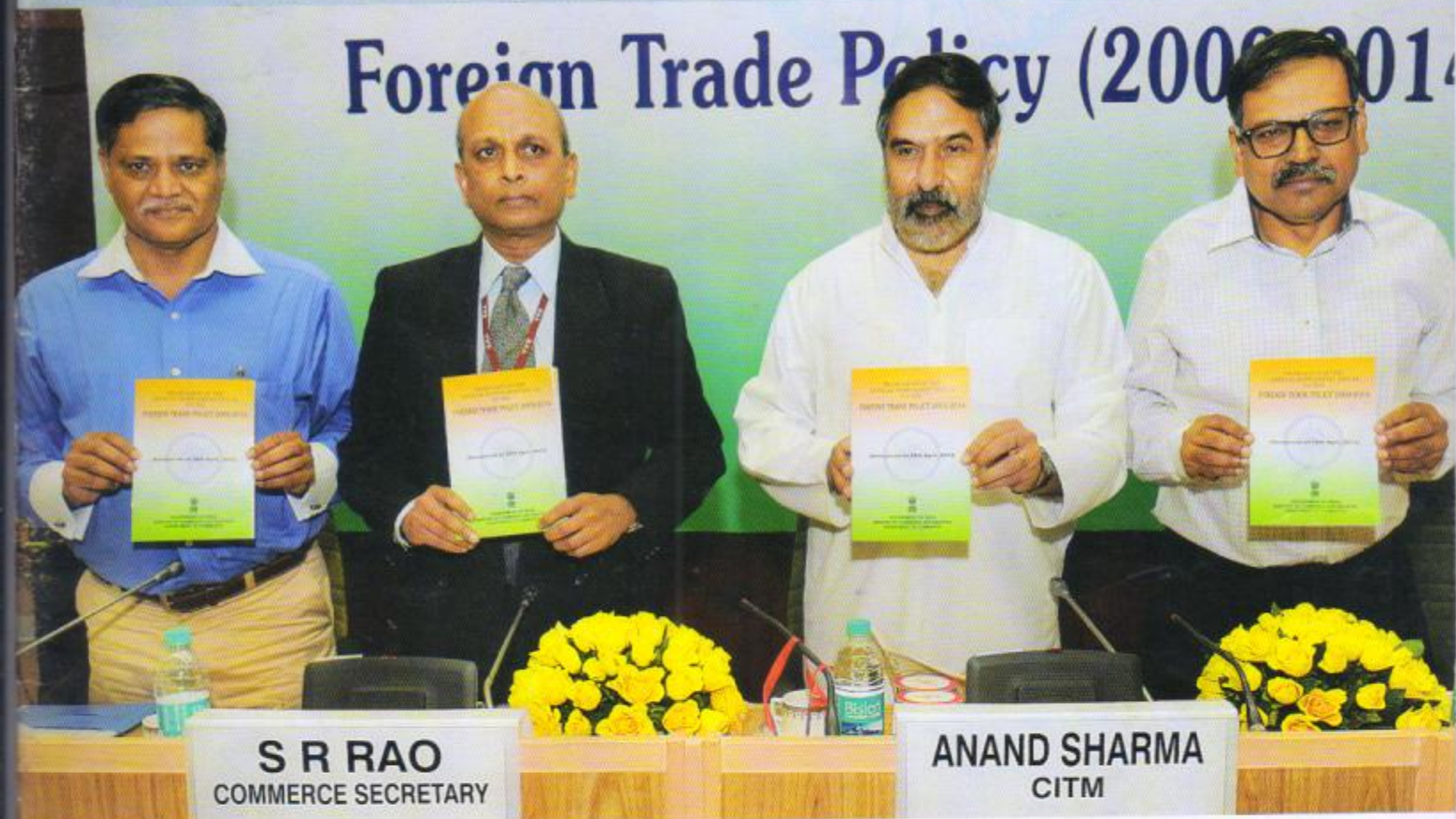
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Foreign Trade Policy (2009-2014)



Mr Anand Sharma, Hon'ble Minister for Commerce, Industry & Textiles (3rd from left) along with Mr S R Rao, Commerce Secretary (2nd from left); Dr Anup K Pujari, DGFT (extreme left) and Mr Sumit Bose, Revenue Secretary (extreme right) releasing the Annual Supplement (2013-14) to the FTP 2009-14

03 Foreign Trade Policy

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Chat

ON LEGAL ISSUES

Every Tuesday, other than holidays, from 4:00 pm to 5:00 pm Ms Aparna Jain, Partner & Advocate, KnowledgeGentia Consultants, for FIEO, will be available on the chat section of the Federation's website to clarify your queries/issues on Corporate Legal Affairs, Arbitration, International Agreement, Technology Transfer, Patents, Trade Marks, Brand Management, Copyright and related topics.

Q: What rights does an intellectual property owner have?

Ans: The object of IP is to protect a work that has only an abstract existence and therefore cannot be perceived by the senses, unlike a building or a car. However, like material goods, intellectual creations may be subject to a property right. It is necessary to distinguish between two concepts when speaking about IP.

Moral right: This grants the author paternity of the intellectual creation and protects the personal and reputational value of a work, as opposed to its purely monetary value. Moral right is especially important under copyright law since the author has the right to decide whether they want to disclose the work to the public. They can set the conditions of its commercial exploitation and defend its integrity. As the author is deemed to have the moral right to control their creation, moral right relates to the connection between an author and their creation.

Economic right: This relates to a creation's commercial value and grants the author a monopoly to exclusively exploit their creation for a certain period. This fosters industrial and commercial relations as well as creativity. Under this monopoly, right holders can prevent third parties from using, manufacturing and selling the creation without authorization. If rights are infringed the author can take legal action against unlawful use of their literary, artistic or industrial creations.

Q: What happens if you do not register your ownership rights?

Ans: Non-registration of ownership rights may lead to someone else use as well as misuse the intellectual property without any benefits to you and even assume ownership of the said property. Patent and copyright information also helps in avoiding duplication of research.

Q: If an independent third party develops a program for a company, who owns the copyright?

Ans: Works created by third parties on commission do not automatically vest the copyright in the commissioning party. If the third party is an independent contractor, it is essential for the commissioning party to obtain the copyright through a written deed of assignment or through the contract of commissioning wherein it is specifically stated that the copyright shall be owned by the company. Thus, it is only where the developer is an employee creating the work under a contract of service that the rights belong to the employer.

Q: Can stamps, labels, tokens and cards be considered articles for the purpose of registration of design?

Ans: No. Because once the alleged design i.e., ornamentation is removed only a piece of paper, metal or like material remains and the article referred ceases to exist. The article

must have its existence independent of the designs applied to it. So, the design as applied to an article should be integral with the article itself.

Q: Can the same applicant make an application for the same design again, if the prior application has been abandoned?

Ans: Yes, the same applicant can apply again since no publication of the abandoned application is made by the Patent Office, provided the applicant does not publish the said design in the meanwhile.

Q: What is the penalty for the piracy of registered design?

Ans: If anyone contravenes the copyright in a design he is liable for every offence to pay a sum not exceeding Rs 25,000 to the registered proprietor subject to a maximum of Rs 50,000 recoverable as contract debt in respect of any one design.

Q: Who is a registered proprietor of a Geographical Indication?

Ans: Any association of persons or of producers or any organization or authority established by or under the law can be a registered proprietor. Their name should be entered in the Register of Geographical Indication as registered proprietor for the Geographical Indication applied for.

Q: How do I know if I can protect my business information as a trade secret?

Ans: Confidential information is likely to be protected as a trade secret if, by virtue of being a secret, it is valuable to the business that owns it and if the owner takes reasonable measures to protect the secret under the circumstances.

Q: How much of my work is protected under a copyright?

Ans: A copyright protects only your expression — not the idea that underlies the expression. A biology textbook, therefore, may receive a lower degree of copyright protection than a work of fiction, because the expression in the