April 18, 2016

Ms. Rita Teotia

The Commerce Secretary

Department of Commerce

Ministry of Commerce and Industry

Udyog Bhavan,

New Delhi 110 107

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Ma'am,

Sub: Clause on patents in the area of computer programmes in the RCEP

We write to you to express our concern on the clauses relating to patents in the area of computer programmes in the Regional Comprehensive Economic Partnership (RCEP) treaty being negotiated. The proposed clause, we learn, requires the signatories to ensure that any patent application is not rejected solely on the ground that the subject matter claimed in the application is a computer program, and that such a claim may take the form of a computer program itself, a process, a storage medium or a computer readable medium carrying a computer program.

The proposed clause will go against the provisions in the Patents Act, 1970 (as amended) and the Guidelines for Examination of Computer Related Inventions issued by the Patent Office. Section 3(k) of the Patents Act that was included by an amendment in 2002 excludes mathematical methods, business methods, computer programmes per se and algorithms from the realm of patentable subject matter.

The Patent Office has in the new Guidelines published on February 19, 2016 introduced a

three part test to determine the patentability of Computer Related Inventions. The test proposes to examine the application and to find out where the actual claimed invention lies. It further proposes that if the claimed invention lies solely in the computer programme, the claim has to be denied. However, it allows the claims to be considered if the invention lies both in the computer programme as well as the hardware.

The provision on computer programmes, mathematical methods and algorithms in our patent law is fully in compliance with our TRIPS obligations and uses the flexibility available in the treaty. The legislature had included these provisions to protect our software industry from patent lawsuits and litigations. Research has shown that patents in the area of computer programmes tend to be litigated most as the boundaries of these patents are often fuzzy.

Section 3(k) of the Patents Act has been a boon to our startups and software developers, allowing them to innovate freely without worrying about patent infringement lawsuits. The proposed clause in the Free Trade Agreement being negotiated could result in floodgates being opened for patents in the field of software. This will make writing code and innovating in the field of software a risky proposition akin to stepping on a minefield, with the developer unaware of when he could be accidentally infringing on a patent. This could also hinder the success of the 'Digital India' programme and hurt the domestic software/IT industry as well as the 'Make in India' initiative.

The Indian industry was able to escape the patent wars being fought across the world in the field of software, thanks to the foresight of our legislators. The intent of the Parliament cannot be overridden by treaties like the RCEP. We as a nation should learn from the

mistakes committed by other countries and keep software out of the realm of patentable subject matter.

We request you to protect the interests of the domestic software industry and startups, to ensure that the proposed clause on patents in the area of computer programmes is excluded and that no clause that runs contrary to the Patents Act is included in the final version of the agreement.

Sincerely,

CONCERNED CITIZENS/ ORGANIZATIONS:
Centre for Internet & Society, Bangalore
Democratic Association for Knowledge Freedom
Digital Empowerment Foundation
Dr.Arul George Scaria
Free Software Foundation India
Free Software Movement of India
Free Software Movement Karnataka
Indian Software Product Industry Round Table (iSPIRT)
Indic Project
IT For Change
National Working Group on Patent Laws and WTO
Prof. Rahul De, Indian Institute of Management, Bangalore
Prof. Shamnad Basheer
SFLC.in
Shri S.Chatterjee, President, All India People's Science Network. Former faculty at Indian Institute of Astrophysics, Bangalore
Shri. G.S.Madhusudan, Founder, Macaque Labs
Shri. Rinka Singh, Co-founder, Melt Iron
Shri. Srinivasan Ramakrishnan, Consultant and Former DG, C-DAC
Society for Knowledge Commons
Swaraj Paul Barooah, Editor in Chief, SpicyIP
Swathanthra Malayalam Computing
Third World Network

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