



**COMMENTS FOR DEPARTMENT FOR PROMOTION OF INDUSTRY AND  
INTERNAL TRADE  
ON THE DRAFT NATIONAL E-COMMERCE POLICY**

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**BACKGROUND**

Consumer Unity & Trust Society ([CUTS](#)) expresses its gratitude to the Department of Promotion of Industry and Internal Trade (DPIIT) for inviting comments and suggestions on the [draft National E-commerce Policy](#) (the draft Policy).

**ABOUT CUTS INTERNATIONAL**

In its 35 years of existence, CUTS has come a long way from being a grassroots consumer-centric organisation based in Jaipur, to opening overseas Resource Centres in [Hanoi](#), [Nairobi](#), [Lusaka](#), [Accra](#), [Geneva](#) and most recently in [Washington DC](#). It continues to remain an independent, non-partisan and non-profit economic policy think tank, while opening various programme centres, namely: Centre for International Trade, Economics & Environment ([CITEE](#)); Centre for Consumer Action, Research & Training ([CART](#)); Centre for Human Development ([CHD](#)); and Centre for Competition, Investment & Economic Regulation ([CCIER](#)). It has been working towards enhancing the regulatory environment through evidence-backed policy and governance related interventions across various sectors and national boundaries. Further details about CUTS, are available [here](#).

Having conducted various studies and events, pertaining to e-commerce (such as: [Internationalisation of Micro and Small Enterprises through e-commerce](#) and [e-commerce in the Context of Trade, Competition and Consumer Protection in India](#)), as well as on Data Protection (such as: [Consumer Sovereignty in the Times of Data Localisation](#), [Comments on the draft Personal Data Protection Bill](#) and [Data Privacy & User Welfare in India](#)), CUTS has observed a few critical issues in the Policy, which may impede the growth of the sector, due to possible regulatory overlaps; broad ambit of the policy; adverse impacts on various stakeholders like industry players, Medium Small & Micro Enterprises (MSMEs), start-ups, consumers etc.

These have been discussed in subsequent sections, along with a few recommendations to address them.

**CUTS SUBMISSIONS**

**PRELIMINARY COMMENTS**

1. **Drafting of the Policy:** The draft Policy in its current form, seems poorly drafted, with elements of regulatory overlaps, ambiguities and overreach. These have been elaborated in the subsequent section. Furthermore, the “vision” should have been upfront and precise along with guiding principles.
2. **Guiding Principles (Page 9):** It is not clear from this Section what are the guiding principles for the draft Policy. This part should be broken down into bullet points clearly stating the overarching/broad principles which would guide the implementation of the Policy in the near future. For example, gauging from the current text, some such principles could be:

- Promotion of competition in/for the market place through entrepreneurship development and innovation
  - Preserving the contestability of various e-commerce markets in India, with a view to ensuring ease of entry for Indian start-ups and MSMEs
  - Protecting the interests of consumers with regard to choice, fair prices, product quality as well as disclosure of business practices, effective grievance redressal mechanism and protection of consumers' privacy, etc
3. **International negotiations on e-commerce (Page 10):** India need not adopt a guarded stand on international negotiations on e-commerce, such as in the World Trade Organisation and in Regional Comprehensive Economic Partnership (RCEP). Rather, it should think like a potential leading supplier of goods and services to the world through various means of digital trade, which can benefit its MSME sector. This is imperative for job creation and retention. The tone in the draft Policy seems more of protecting market, as against seeking more and better market access outside India. This should not be the thinking of New India.

There are other issues relevant to the on-going international negotiations, which needs to be addressed. For instance, the definition of 'e-commerce' in the WTO parlance is wider than that of the given definition in the draft Policy, thus, it would be prudent to revisit the definition. Further, the Policy may need to be aligned with our commitments under General Agreement on Trade in Services (GATS) under WTO as well as from the perspective of 'National Treatment' and 'Most Favoured Nation' (non-discriminatory) commitments in under WTO agreements<sup>1</sup>.

4. **Competition policy perspective:** It is well acknowledged that digital economy, including e-commerce, is prone to what is called as winner-take-all phenomenon, which adds to the growing concentration in digital economy. This in turn has adverse effect on jobs and income of people and hence contributes to economic inequality. Competition law and its enforcement are struggling to address this menace. An ex ante tool in form of competition policy is better suited to deal with growing concentration. Therefore, the Policy may like to recommend adoption of National Competition Policy and it should also be reviewed from the lens of select principles of the Draft National Competition Policy<sup>2</sup>. Adhering to competition principles in national and state policies – such as Industrial Policy (including IP Policy), Trade Policy, Data Protection Policy, ICT/Digital Communication Policy etc. – is more likely to counter the menace of growing concentration.<sup>3</sup>
5. **Artificial Intelligence (AI):** AI technologies are nascent and continuously being developed. Larger and more nuanced discussions on AI principles have been initiated internationally, including on shared access to certain technologies. While a separate discussion on this by the Government of India is needed, the Draft Policy is not the appropriate forum to discuss AI transparency and explanation and it will require a separate consultation all together.
6. **Digital Payments:** The RBI has come forward with a proposal to regulate payment gateway service providers and payment aggregators. It had also indicated in its Payment and Settlement Systems - Vision 2018 that "*The increasing growth of electronic payments, especially online payments, riding the growth of e-commerce and m-commerce transactions, has brought to the fore the increasing role and importance of entities that facilitate such online payments such as payment gateway providers and payment aggregators. The current guidelines on maintenance of nodal accounts for such intermediaries (monitored through banks) are*

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<sup>1</sup> For more details, please see "White Paper: Analysing India's draft E-commerce Policy" by ELP, March 2019

<sup>2</sup> [http://www.mca.gov.in/Ministry\\_hn/pdf/Draft\\_National\\_Competition\\_Policy.pdf](http://www.mca.gov.in/Ministry_hn/pdf/Draft_National_Competition_Policy.pdf)

<sup>3</sup> For more insights on this, please see: CUTS and CIRC Submission to the Competition Law Review Committee at [http://cuts-ccier.org/pdf/CUTS-CIRC\\_Submission\\_to\\_Competition\\_Law\\_Review\\_Committee.pdf](http://cuts-ccier.org/pdf/CUTS-CIRC_Submission_to_Competition_Law_Review_Committee.pdf)

*indirect and address only a few specific aspects of their functioning. Given their increasing role, the guidelines will be revised for the payments related activities of these entities."* To move towards its vision, the RBI has appointed a high-level committee headed by Nandan Nilekani to review the existing status of digitisation of payments in the country, identify gaps in the ecosystem and find ways to bridge them. As a result, the RBI has taken many steps towards formulating a comprehensive framework to address digital payments and it would be advisable for the draft Policy to avoid bringing such players within its scope and to leave their regulation to the RBI.

## DETAILED COMMENTS

Policy provisions	Recommendations
<b>I. DATA</b>	
<u>Issue 1: Goes much beyond Srikrishna Committee findings (Page 16)</u>	
<p>Acknowledges the evolving Draft Personal Data Protection Bill (<a href="#">PDPB</a>), yet it goes much beyond the much the same with its scope of governing personal and sensitive personal data, in instances, such as the one mentioned below.</p> <p><i>1.2 A business entity that collects or processes any sensitive data in India and stores it abroad, shall be required to adhere to the certain conditions.</i></p> <p>a) All such data stored abroad shall not be made available to other business entities outside India, for any purpose, <u>even with the customer consent</u>;</p> <p>b) All such data stored abroad shall not be made available to a third party, for any purpose, <u>even if the customer consents to it</u>;</p>	<p>The draft Policy goes much beyond the findings of Srikrishna Committee on personal data protection. Over-riding customer consent tends to negate the theory that customers own their data.</p> <p>Therefore, it needs to be thoroughly analysed/debated before going beyond the Srikrishna Committee findings, which was a result of a detailed consultative process.</p>
<u>Issue 2: Overreach of the Policy – Page 9</u>	
<p>The draft Policy expressly states that the terms E-commerce and digital economy have been used interchangeably.</p> <p>E-commerce has been defined as: <i>buying, selling, marketing or distribution of (i) goods, including digital products and (ii)</i></p>	<p>Digital economy has a much wider scope, and includes a bevy of activities, as is evident through the definitions referred by DPIIT (given in Appendix I of the policy). That should not be mixed or used interchangeably with e-commerce; otherwise we may face the risk of divergence and over-reach of the Policy (as might be the case here). Their business model and revenue model are different from the business model of e-commerce players and any policy on e-commerce should not be regulating their activities. It may lead to a quagmire, where many</p>

Policy provisions	Recommendations
<p><i>services; through electronic network. Delivery of goods, including digital products, and services may be online or through traditional mode of physical delivery. Similarly, payments against such goods and services may be made online or through traditional banking channels i.e. cheques, demand drafts or through cash.</i></p>	<p>unintended firms/service providers (such as social media, search engines etc.) and activities come within the ambit of the E-commerce Policy.</p> <p>Accordingly, the Policy should have been restricted to cover data governance relevant in the e-commerce sector only.</p> <p>Notably, the definition of e-commerce as used in the Policy is much wider than the one used in DPIIT's <a href="#">Press Note 2</a> of 2018, which pertains to Review of the Policy on Foreign Direct Investment (FDI) in e-commerce.</p>
<p><u>Issue 3: Ambiguities in Definition of Data – Page 11</u></p>	
<p>Definition of data in the context of e-Commerce is ambiguous and demands clarity.</p> <p><i>In the context of e-commerce, data is any type of information converted into a binary digital form that is efficient to store, process and transfer across different devices, platforms, servers and borders.</i></p>	<p>This definition does not appropriately classify and define data as personal data, sensitive personal data, user generated data, anonymised data, community data, unstructured data, big data, etc. They vary in great degree with respect to their contours, protection accorded, and implication on stakeholders.</p> <p>Also, many of these terms have been used in different contexts in different parts of the draft Policy, leading to ambiguity, with respect to which categories of data are falling under the scope of the Policy.</p> <p>A much more structured approach should be adopted, wherein types and categories of data falling under the ambit of the Policy are clearly defined and the vision of protecting, processing and/or monetising them are individually laid down.</p>
<p><u>Issue 4: Data as a National Asset – Page 14</u></p>	
<p>Based on the premise that <i>data about a group of individuals and derivatives from it is thus the collective property of the group</i>, the Policy lays down that <i>the data of a country, therefore, is best thought of a collective resource, a national asset, that the government holds in trust, but rights to which can be permitted. The analogy of a mine of natural resource or spectrum works here.</i></p> <p><i>India and its citizens have a sovereign right to their data. This right cannot be extended to non-Indians (the same way that non-Indians do not have any prima-facie right or claim to, say, an Indian coal mine).</i></p>	<p>The Draft Personal Data Protection Bill (PDPB) has given rights to data principals (users), which are limited to personal data. Though the Data Protection Committee (Committee) Report (<a href="#">Report</a>) has acknowledged the importance of community data<sup>4</sup>, and also highlighted the need for a separate law to be enacted for its governance,<sup>5</sup> it remains to be checked whether an e-commerce policy would be the correct tool for governing ‘community data’ or not.</p> <p>Furthermore, community is to be adequately defined. The Report called for distinguishing community data from large scale data collection. Also, the Report called for a ‘collective protection of privacy’, of an ‘identifiable community’ that has contributed to community data. These contours seem to have been missed in the Policy. Extensive and inclusive stakeholder consultations, along with evidence-based research are required to deliberate on such issues.</p>

<sup>4</sup> Community data relates to a group dimension of privacy and is a suggested extension of our data protection framework. It is a body of data that has been sourced from multiple individuals, over which a juristic entity may exercise rights. Such data is akin to a common natural resource, where ownership is difficult to ascertain due to its diffused nature across several individual entities. It is relevant for understanding public behaviour, preferences and making decisions for the benefit of the community.

Page 45, Data Protection Committee Report, headed by Retired Justice BN Srikrishna  
[https://meity.gov.in/writereaddata/files/Data\\_Protection\\_Committee\\_Report-comp.pdf](https://meity.gov.in/writereaddata/files/Data_Protection_Committee_Report-comp.pdf)

<sup>5</sup> Page 45, Data Protection Committee Report, headed by Retired Justice BN Srikrishna  
[https://meity.gov.in/writereaddata/files/Data\\_Protection\\_Committee\\_Report-comp.pdf](https://meity.gov.in/writereaddata/files/Data_Protection_Committee_Report-comp.pdf)

Policy provisions	Recommendations
<p><i>However, access to it can be negotiated, in national Interest.</i></p>	<p>The Draft Policy also states that a framework will be developed for sharing community data that serves a larger public interest with start-ups and firms, subject to privacy. This will be implemented by a "data authority" established for this purpose. It is not clear whether the reference here is to the Data Protection Authority proposed under the PDPB. This seems to suggest that entities will be required to disclose community data collected by them to other private entities if it is deemed necessary for the larger public interest. However, this will mean overriding the consent provided by individual data subjects for the use of their data by a specific entity for purposes disclosed to them at the time of taking such consent.</p> <p>It may also be noted that concepts of data sovereignty must be applicable for the right stakeholder group, i.e. consumers, and not the government. Therefore, the expectations, perceptions, and perspectives of such identifiable communities may need to be taken into account while formulating policies around community data. Tools such as Consumer Impact Assessment (CIA)<sup>6</sup> may be adopted in this regard. Notably, CUTS is undertaking a study entitled '<a href="#">CIA of Data Localisation</a>', pertaining to personal data. Similar studies may be undertaken for determining the merits of governing community data.</p> <p>A phased approach in enacting and implementing regulations pertaining to data governance may also be needed in order to frame optimal regulations and also implement them in true spirit. The effect of such regulations on various stakeholders would be better understood and recorded this way.</p> <p>The draft Policy refers to the concept of data sovereignty, however, the context of data sovereignty for consumers/citizens, must not be mixed with national sovereignty and consumers must be given the right to choose the end use of data collected from them.</p> <p>Also, various risks associated with excessive government's access to data such as misuse of data against certain sections of society, surveillance of certain communities must be taken into account, before incorporating such provisions in a policy.</p> <p>Apart from ensuring fundamental right to privacy, the Government's role should be in regulating the misuse of data by private firms including avoiding winner-takes-all situation.</p> <p>Caution must also be flagged for the exclusionary language used in the Policy, against foreign industry players, which may tilt the playing field in favour of domestic industry players leading to anti-competitive practices and adverse outcomes for consumers.</p>
<p>Issue 5: Sharing Community Data with Start-ups and Firms – Page 17</p>	

<sup>6</sup> Consumer Impact Assessment offers a framework to assist policy analysts in the process of assessing and considering consumer impacts when designing or evaluating new policies. [https://ic.gc.ca/eic/site/oca-bc.nsf/eng/h\\_ca02564.html](https://ic.gc.ca/eic/site/oca-bc.nsf/eng/h_ca02564.html)



Policy provisions	Recommendations
<p>The Policy states that a <i>suitable framework will be developed for sharing of community data that serves larger public interest (subject to addressing privacy-related issues) with start-ups and firms.</i></p>	<p>It remains to be seen as to how such a framework would develop and operate, especially in light of the Government’s ‘Bulk Data Sharing Policy’. Under this the Government intends to monetise a database of vehicle registration certificates, citing benefits to the ‘transport and automobile industry’, despite looming concerns of privacy and data protection.<sup>7</sup></p> <p>Without getting into the merits of such a policy, considering the reserved amount of Rs.3 crores (Rs.30mn), for commercial organisations to get access to such data, it remains to be seen how sharing community data will benefit start-ups. They may not be able to afford such access.</p>
<p><b>Issue 6: Data Localisation – Page 16</b></p>	
<p>The Policy has explicitly mentioned certain categories of data, on which cross-border flow restrictions shall apply.</p> <p><i>A legal and technological framework to be created that can provide the basis for imposing restrictions on cross-border data flow from the following specified sources:</i></p> <p><i>a) Data collected by IoT devices installed in public space; and</i></p> <p><i>b) Data generated by users in India by various sources, including e-commerce platforms, social media, search engines etc.</i></p> <p>It has further raised concerns that <i>by not imposing restrictions on cross-border data flow, India would itself be shutting the doors for creation of high-value digital products in the country.</i></p>	<p>The draft Policy mandates data localisation (DL), which may have adverse impact on start-ups, among other relevant stakeholders. Possible rise in prices or unavailability of foreign cloud computing services in case of a DL mandate and its impact on MSMEs as well as start-ups relying on these services should be counted for<sup>8</sup>. They may have a trickle-down effect on consumers.<sup>9</sup> Moreover, without freer cross-border flow of data, promotion of cross-border e-commerce is very difficult.</p> <p>The observation of the Srikrishna Committee must be treated as a recommendation viz. <i>India would have to carefully balance possible enforcement benefits of localisation, with the costs involved in mandating such a policy.</i><sup>10</sup></p> <p>It needs to be understood whether DL is the only mechanism to achieve the desired objectives or there can be other less restrictive mechanisms to achieve such objectives. In the present context, it seems that ‘access to data’ by Indian firms would achieve the desired policy objectives, irrespective of the location of data. Thus, it would be desirable to adhere to ‘access’ approach instead of ‘localisation’ approach.</p> <p>It is recommended that the regulation making process be more balanced and pro-active, instead of being merely a reactive one. Regulations can have varied and divergent impacts on different stakeholders. It is, thus, necessary to ensure that in the process of achieving its objectives the costs imposed by regulation on stakeholders do not outweigh its benefits. Moreover, assumptions and fear ought to be replaced with evidence-based research from various perspectives – economic, social as well as civil liberties.</p> <p>Accordingly, undertaking Regulatory Impact Assessment (RIA)<sup>11</sup> and/or Cost-Benefit Analysis (CBA) of the proposed data mirroring and</p>

<sup>7</sup> <https://www.hindustantimes.com/delhi-news/govt-clears-policy-to-sell-vehicle-registration-data/story-n4aBtGpJgETNuN9ybAW3LL.html>

<sup>8</sup> <https://www.thehindubusinessline.com/opinion/approach-data-localisation-with-care/article24281271.ece>

<sup>9</sup> <https://retail.economictimes.indiatimes.com/news/e-commerce/e-tailing/draft-e-commerce-policy-will-wreak-havoc-on-indian-startups/68435618>

<sup>10</sup> Page 83, Data Protection Committee Report, headed by Retired Justice BN Srikrishna [https://meity.gov.in/writereaddata/files/Data\\_Protection\\_Committee\\_Report-comp.pdf](https://meity.gov.in/writereaddata/files/Data_Protection_Committee_Report-comp.pdf)

<sup>11</sup> Regulatory Impact Assessment (RIA) is a process of systematically identifying and assessing direct and indirect impacts of regulatory proposals and existing regulations, using consistent analytical methods. It involves a

Policy provisions	Recommendations
	<p>localisation mandate becomes an imperative to map their impact on various stakeholders before their pronouncement or enactment.</p> <p>Notably, its benefits have been recognised by the Better Regulation Advisory Group (BRAG) created by DPIIT [formerly Department of Industrial Planning and Promotion (DIPP)] itself.<sup>12</sup></p> <p>Further details pertaining to CUTS’ stand on DL have been submitted in a response on the PDPB to the Ministry of Electronics and Information Technology (MeitY), which are accessible <a href="#">here</a>. They may be relevant with regard to this Policy.</p>
<b>II. Infrastructure Development – Page 18</b>	
Issue 1: Possible Regulatory Overlaps	
<p>The Policy rightly acknowledges that <i>a robust digital economy that aids the country’s development trajectory requires a physical infrastructure as well.</i></p> <p>However, it takes it upon itself to realise this requirement of (i) <i>development of secure and stable digital infrastructure;</i> along with (ii) <i>delivering government services digitally;</i> and (iii) <i>universal digital literacy.</i></p>	<p>It remains to be checked whether an e-commerce policy is the appropriate venue for taking forward the core components of Digital India (DI).</p> <p>This gets highlighted in light of the already existent National <a href="#">Digital Communications Policy 2018</a>, which was drafted with a vision to <i>fulfil the information and communication needs of citizens and enterprises through the establishment of a ubiquitous, resilient, secure, accessible and affordable Digital Communications Infrastructure and Services; and in the process, support India’s transition to a digitally empowered economy and society,</i> and envisioned three missions to realise the same – Propel India, Connect India and Secure India.</p> <p>A Whole of Government Systems Approach is required to be adopted by the government, to appropriately align different policies within the digital economy of the country. Proposal to establish the Standing Group of Secretaries on E-commerce (SGoS) in the draft Policy is a right move in this regard.</p>
Issue 2: Timeframe to allow industry to adjust to local data storage requirement	
<p>The draft Policy gives a time-period of three months to allow industry to adjust to the data storage requirement.</p>	<p>Without getting into the merits of imposing data storage within the country, the time period given by the government is a welcome step.</p> <p>It is worth deliberating, if the PDPB, <a href="#">Reserve Bank of India’s (RBI) Notification 2018 on Storage of Payment System Data</a> etc., could have also provisioned such clauses for a smooth and phased transition to local data storage.</p>
Issue 3: Granting Infrastructure Status	
<p>Granting Infrastructure Status - <i>Data centres, server farms, towers and tower stations, equipment, optical wires, signal transceivers, antennae etc. will be accorded ‘infrastructure status’.</i></p>	<p>One may guess that India is gearing towards forced data localisation, i.e. forcing the storage of data within national borders by building up necessary infrastructure. However, the desirability and impact of such a measure is debatable.</p>

participatory approach via public consultation to assess such impact, determination of costs and benefits, and selection the most appropriate regulatory alternative. <http://cuts-ccier.org/ria/>

<sup>12</sup> <http://pib.nic.in/newsite/PrintRelease.aspx?relid=176264>

Policy provisions	Recommendations
<p>Implementation of policy - <i>Physical infrastructure for setting up of data centers (power supply, connectivity etc.) will be established by the relevant implementing agencies, while financing agencies may identify these as infrastructure that they may intend to support.</i></p>	<p>Granting of an ‘infrastructure’ status to data centres, server farms, towers etc. is a welcome step. However, the on-ground implementation of realising the vision of developing capacity for data storage in India along with the other components of Digital India, remain questionable.</p> <p>This is evident in light of various delays and technical inadequacies faced by major Digital India programmes, most prominent of these being the ambitious Bharat Net initiative which forms its backbone.<sup>13</sup> This highlights the incapacity of implementing agencies of the government.</p> <p>Public Private Partnership (PPP) model may be adopted to overcome such obstacles. Also, instead of building roadblocks for foreign digital businesses, the government may build corridors for FDI, in setting up digital infrastructure in the country, which may be in the form of financial and/or technical assistance. Optimal exploitation of the investment potential in the digital sector of the country<sup>14</sup> must be focussed upon.</p>
<p>Issue 4: Domestic Alternatives</p>	
<p>The policy envisions to promote <i>domestic alternatives to foreign-based clouds and email facilities.</i></p>	<p>The costs of mandating domestic cloud storage have already been given above. Also, the government’s vision of reinventing the wheel in a globalised world, with respect to the need of having domestic email facilities needs to be revisited.</p> <p>Be as it may, apart from the technical capacity required for this, various other issues pertaining to data privacy concerns, state surveillance risks etc., need to be addressed before proposing such a policy. Undertaking an <i>ex-ante</i> RIA in this regard is highly recommended.</p>
<p><b>III. e-Commerce Marketplaces</b></p>	
<p>Issue 1: Foreign Direct Investment – Page 19</p>	
<p>(A) FDI</p> <p>The policy reiterates the stand taken by the government in the Review of Policy on <a href="#">FDI in e-commerce</a>, by discouraging foreign investments in inventory-based models of sale and distribution.</p>	<p>Vital issues remain to be resolved in this regard, to achieve the objective of promoting healthy economic democracy, i.e. creating a level-playing field for both domestic and foreign e-commerce platforms.<sup>15</sup></p> <p>The current norms for the segment are applicable to foreign e-commerce businesses, which might create a discriminatory environment in favour of domestic players,<sup>16</sup> thereby holding the potential to distort competition, and risk harming consumer welfare in the long run.</p> <p>Impact on Medium Small and Micro Enterprises (MSMEs) and start-ups by disallowing FDI in inventory-based models, or continuing to allow domestic players in indulging in the same, needs to be revisited.</p>
<p>Issue 2: Domestic firms allowed inventory model (Page 20)</p>	

<sup>13</sup> <https://thewire.in/government/pmo-bharatnet-project-shoddy-state-of-broadband-initiative>

<sup>14</sup> <http://ficci.in/spdocument/20936/ASEAN-India-Growing.pdf>

<sup>15</sup> <https://m.dailyhunt.in/news/india/english/windowtonews-epaper-wintonws/domestic+foreign+e+commerce+players+should+be+treated+alike+cuts+international-newsid-105675031>

<sup>16</sup> [https://www.business-standard.com/article/news-ians/domestic-foreign-e-commerce-players-should-be-treated-alike-cuts-international-119010600451\\_1.html](https://www.business-standard.com/article/news-ians/domestic-foreign-e-commerce-players-should-be-treated-alike-cuts-international-119010600451_1.html)



Policy provisions	Recommendations
(B) Other strategies relating to e-commerce marketplaces	The Policy does not mandate domestic e-commerce platforms to adhere to ‘marketplace’ model. They are not barred from adopting ‘inventory model,’ which may be discriminatory and can go against the interest of MSMEs/start-ups and small vendors. If foreign firms can misuse ‘inventory model’ so can domestic firms.
Issue 3: Anti-counterfeit and anti-piracy measures (Page 21-22)	
(C) Anti-Counterfeiting Measures and (D) Anti-piracy measures	<p>While anti-counterfeiting and anti-piracy measures are welcome steps, <i>prima facie</i> some of the provisions need to be included after stakeholder consultations.</p> <p>For instance, since the ‘principle of exhaustion of rights’ applies to several e-commerce transactions, giving Trade Mark owners power to stop its product for sale seems unbalanced, and defeats the objectives of the relevant intellectual property laws, such as Trade Marks Act.</p> <p>Parallel imports are pro-competition measures and should not be curtailed by giving more rights to Trademarks/Copyright owners as bestowed under respective intellectual property laws. Therefore, provisions under 3.12 and 3.13 should be reviewed so that they do not dilute India’s stand and laws related to parallel imports. For goods under parallel imports (which are not counterfeits), brand owner needs to provide all associated guarantees or warranties (see Section 3.15).</p> <p>In certain sections in the draft Policy, it seems e-commerce market places have been held to be liable unjustifiably (e.g. 3.14 and 3.16) and can increase compliance costs for platforms as well as online vendors. For instance:</p> <ul style="list-style-type: none"> <li>• Intermediaries may be asked to take steps to prevent online dissemination of pirated content.</li> <li>• Platforms may be required to have mechanisms to notify trademark owners/licensees about potential infringement.</li> <li>• Payment gateways may need to restrict payments to ‘rogue websites’.</li> <li>• Platforms may be liable and responsible for ensuring the authenticity of content on their platforms.</li> </ul> <p>Such obligations are likely to burden companies with additional financial costs. The draft Policy demanding internet intermediaries to proactively monitor content on their platforms may also go against the Supreme Court of India’s order in <i>Shreya Singhal v. Union of India</i>.<sup>17</sup></p> <p>For anti-counterfeiting and anti-piracy, India may like to learn from the E-commerce Law of the People’s Republic of China and reflect some of the learnings in the draft Policy.</p>
(F) Consumer Oriented Customer Service	Some clear principles with regards to dispute settlement mechanisms should be devised. This is to ensure the protection of consumers’ interests in e-commerce transaction. The Policy should refer to the Consumer Protection Act of India.

<sup>17</sup> WP (CRIMINAL) NO.167 OF 2012

Policy provisions	Recommendations
	<p>The Policy has not touched upon consumer protection in cross-border e-commerce. An online dispute resolution mechanism should have been proposed to address cross-border e-commerce grievances.</p> <p>It is also recommended to include a sub-section on general trading/commercial conditions or standard contractual clauses in the context of e-commerce. This is to ensure a better level of protection to consumers.</p>
<b>IV. Regulatory issues</b>	
General Comment	The background discussion does not provide sufficient leads into subsequent Strategies. What should be highlighted are regulatory issues with regard to e-commerce that needs to be addressed by India.
Strategies A-J	The current content is more fitting for a general discussion in a strategy paper. What one should look for are regulatory principles to be adhered to in regulating digital marketplaces, or action points with regards to the various issues mentioned therein.

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