

## CHAPTER FIFTEEN INTELLECTUAL PROPERTY RIGHTS

### ARTICLE 15.1: OBJECTIVES

The objectives of this Chapter are:

- (a) to increase the benefits from trade and investment;
- (b) to promote innovation and creativity;
- (c) to facilitate production and commercialization of innovative and creative products; and
- (d) to contribute to the transfer and dissemination of technology, in a manner conducive to social and economic welfare, and to the balance between the rights of the right holders and the public interest.

### ARTICLE 15.2: OBSERVANCE OF INTERNATIONAL OBLIGATIONS

The Parties affirm their rights and obligations under the TRIPS Agreement, as well as any other multilateral agreement related to intellectual property and the agreements administered by the World Intellectual Property Organization (hereinafter referred to as “WIPO”), that are in force between the Parties.

### ARTICLE 15.3: MORE EXTENSIVE PROTECTION

The Parties may, but shall not be obliged to, provide more extensive protection for, and enforcement of, intellectual property rights under their laws than this Chapter requires, provided that the more extensive protection does not contravene this Chapter.

### ARTICLE 15.4: BASIC PRINCIPLES

1. The Parties shall grant and ensure adequate, effective, and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights.
2. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals<sup>1</sup> of the other Party treatment no less favorable than it accords to its

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<sup>1</sup> For purposes of paragraph 2, a **national** of a Party shall include, in respect of the relevant right, any person (as defined in Article 1.3 (Definitions)) of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 15.7.1 and the TRIPS Agreement.

own nationals with regard to the protection<sup>2</sup> and enjoyment of such intellectual property rights and any benefit derived from such rights.

#### ARTICLE 15.5: GENERAL PROVISIONS

1. The Parties recognize the need to maintain a balance between the rights of the right holders and the public interest.
2. The Parties recognize the importance of the principles established in the *Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2), adopted on November 14, 2001 by the WTO at its Fourth Ministerial Conference, held in Doha, Qatar, and in the Decision of the WTO General Council on the *Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*, adopted on August 30, 2003. The Parties also recognize the importance of promoting the implementation and full use of Resolution WHA61.21, *Global Strategy and Plan of Action on Public Health, Innovation, and Intellectual Property*, adopted on May 24, 2008 by the Assembly of the World Health Organization.
3. Each Party may, in formulating or amending its laws and regulations, adopt measures necessary, and make use of the exceptions and flexibilities, to protect public health and nutrition, and to promote the public interest in sectors of vital importance to its socio-economic and technological development.
4. The Parties recognize the impact of information and communication technologies on the use of literary and artistic works, artistic performances, phonogram productions, and broadcasts and, therefore, the need to provide adequate protection of copyright and related rights in the digital environment.
5. The Parties may take appropriate measures, if needed to prevent the abuse of intellectual property rights by right holders, or the resort to practices which unreasonably restrain trade or adversely affect international transfer of technology.
6. The Parties recognize that technology transfer contributes to the strengthening of national capabilities with the aim of establishing a sound and viable technological base.
7. The Parties shall be free to establish their own regime for exhaustion of intellectual property rights.

#### ARTICLE 15.6: TRADEMARKS

##### *Trademarks Protection*

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<sup>2</sup> For purposes of paragraph 2, **protection** includes: (i) matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter, (ii) the prohibition on circumvention of effective technological measures set out in Article 15.7, and (iii) the rights and obligations concerning rights management information and encrypted program-carrying satellite signals set out in Article 15.7.

1. Neither Party shall require, as a condition of registration, that signs be visually perceptible, nor shall either Party deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or a scent<sup>3</sup>.

2. Each Party shall provide that trademarks shall include collective marks and certification marks.

3. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, at least for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign, for identical goods or services, a likelihood of confusion shall be presumed.

#### *Exceptions to Trademarks Rights*

4. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

#### *Well-Known Trademarks*

5. Neither Party shall require, as a condition for determining that a mark is a well-known mark, that the mark has been registered in the territory of that Party or in another jurisdiction. Additionally, neither Party shall deny remedies or relief with respect to well-known marks solely because of the lack of:

- (a) a registration;
- (b) inclusion on a list of well-known marks; or
- (c) prior recognition of the mark as well-known.

6. Article 6bis of the *Paris Convention for the Protection of Industrial Property* (1967) (the Paris Convention) shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark<sup>4</sup>, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

7. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark, for related goods or services, if the use of that trademark is likely to cause confusion, or to cause

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<sup>3</sup> A Party may require an adequate description, which can be represented graphically, of the sign.

<sup>4</sup> For the purpose of determining whether a mark is well-known, neither Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

mistake, or to deceive or risk associating the trademark with the owner of the well-known trademark, or constitutes unfair exploitation of the reputation of the well-known trademark.

#### *Registration and Applications of Trademarks*

8. Each Party shall provide a system for the registration of trademarks, in which the reasons for a refusal to register a trademark shall be communicated in writing and may be provided electronically to the applicant, who will have the opportunity to contest such refusal and to judicially appeal a final refusal.

9. Each Party shall also introduce the possibility to oppose trademark applications.

10. Each party shall provide a publicly available electronic database of trademark applications and trademark registrations.

11. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than 10 years.

#### *Judicial and Administrative Means*

12. Each Party shall provide a system that permits owners to assert their rights in trademarks, and interested parties to challenge such rights in trademarks, through administrative or judicial means, or both.

### ARTICLE 15.7: COPYRIGHT AND RELATED RIGHTS

#### *Protection Granted*

1. Each Party shall comply with:

- (a) the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (the Berne Convention);
- (b) the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* (1961) (the Rome Convention);
- (c) the *WIPO Copyright Treaty* (1996); and
- (d) the *WIPO Performances and Phonograms Treaty* (1996).

#### *Rights of Performers and Producers of Phonograms*

2. Each Party shall provide to performers and producers of phonograms the right to a single equitable remuneration for the direct or indirect use of phonograms published for

commercial purposes for broadcasting or for any communication to the public, in accordance with its legislation.

### *Collective Management Organizations*

3. The Parties recognize the importance of collective management societies for copyright and related rights, in order to ensure an effective management of the rights entrusted to them, and an equitable distribution of the collected remunerations, which are proportional to the utilization of the works, performances, or phonograms, in a context of transparency and good management practices, according to the legislation of each Party.

### *Rights of Broadcasting Organization*

4. Each Party shall provide broadcasting organizations with the exclusive right to authorize or prohibit:

- (a) the re-broadcasting of their broadcasts<sup>5</sup>;
- (b) the fixation of their broadcasts;
- (c) the reproduction of fixations; and
- (d) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee. It shall be a matter for the law of the Party where protection of this right is claimed to determine the conditions under which it may be exercised.

### *Protection of Technological Measures*

5. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of any effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, committed by a person knowing, or having reasonable grounds to know, that such person is pursuing that objective.

6. Each Party shall provide adequate legal protection and effective legal remedies against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes, of devices, products, or components, or the provision of services which:

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<sup>5</sup> With respect to the protection of broadcasts, a Party may protect broadcasts only if the headquarters of the broadcasting organization is situated in the other Party's territory and the broadcast was transmitted from a transmitter situated in the other Party's territory.

- (a) are promoted, advertised, or marketed, for the purpose of circumvention of;
- (b) have only a limited commercially significant purpose or use, other than to circumvent; or
- (c) are primarily designed, produced, adapted, or performed, for the purpose of enabling or facilitating the circumvention of,

any effective technological measure.

7. For purposes of this Chapter, **technological measure** means any technology, device, or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, performances, or phonograms, which are not authorized by the right holder of any copyright or any right related to copyright, as provided for by each Party's legislation. Technological measures shall be deemed effective when the use of a protected work, performance, or phonogram is controlled by the right holders through the application of an access control or protection process, such as encryption, scrambling, or other transformation of the work, performance, or phonogram, or a copy control mechanism, which achieves the objective of protection.

8. Each Party may provide for exceptions and limitations to measures implementing paragraphs 5 and 6 in accordance with its legislation and the relevant international agreements it is a party to.

#### *Protection of Rights Management Information*

9. Each Party shall provide adequate legal protection and effective legal remedies against any person knowingly performing without authority any of the following acts:

- (a) the removal or alteration of any rights management information; or
- (b) the distribution, importation for distribution, broadcasting, communication, or making available to the public, of works, performances, or phonograms, protected under this Chapter, from which rights management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by doing so it is inducing, enabling, facilitating, or concealing an infringement of any copyright or any right related to copyright as provided by the law of the relevant Party.

10. For purposes of this Chapter, **rights management information** means any information provided by right holders, which identifies the work, performance, or phonogram referred to in this Chapter, the author, the performer, or the producer of the phonogram, or information about the terms and conditions of use of the work, performance, or phonogram, and any numbers or codes that represent such information.

11. Paragraph 10 shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work, performance, or phonogram referred to in this Chapter.

*Protection of Encrypted Program-Carrying Satellite Signals*

12. Each Party shall provide adequate legal protection and effective legal remedies against the:

- (a) manufacturing, assembling, modification, importation, exportation, sale, leasing, or any other distribution of a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and
- (b) willful reception<sup>6</sup> or further distribution of a program-carrying signal that originated as an encrypted satellite signal, knowing that it has been decoded without the authorization of the lawful distributor of the signal.

ARTICLE 15.8: ENFORCEMENT

*General Obligations*

1. The Parties shall establish provisions for the enforcement of intellectual property rights in their laws, of the same level as that provided in the TRIPS Agreement, in particular Articles 41 through 61.

*Presumption of Authorship or Ownership*

2. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated in the usual manner is the right holder in the work, performance, phonogram, or broadcast as designated.

*Special Measures against Repetitive Copyright Infringers on the Internet*

3. Each Party shall endeavor to take effective measures to curtail repetitive infringements of copyright and related rights on the Internet.

ARTICLE 15.9: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES

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<sup>6</sup> For greater certainty, each Party may determine that **reception** includes viewing of the signal, whether private or commercial.

1. Each Party shall provide that any right holder initiating procedures for its competent authorities to suspend release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods<sup>7</sup>, into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by its competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures.

2. Where the competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

3. Each Party shall provide that its competent authorities may initiate border measures *ex officio* with respect to imported, exported, or in-transit merchandise, without the need for a formal complaint from a private party or right holder. Such measures shall be used when there is a reason to believe or suspect that such merchandise is counterfeit or pirated.

#### ARTICLE 15.10: TECHNOLOGY TRANSFER AND COOPERATION

##### *Technology Transfer*

1. The Parties recognize the importance of technological innovation as well as transfer of technology and dissemination of scientific and technological information to the mutual advantage of technology producers and users. Accordingly, the Parties will seek to develop and encourage cooperation programs, through collaborations in science, technology, and innovation. The Parties shall take into account the cooperation issues and activities developed under the *Agreement on Scientific and Technical Cooperation* between the Parties, signed in 1981, with the purpose of encouraging and strengthening the cooperative activities on research, innovation, and technology transfer.

2. The Parties agree to exchange views and information on their practices and policies affecting transfer of technology both within their respective territories and with third countries. This shall in particular include measures to facilitate information flows, business partnerships, licensing, and subcontracting. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer in the host

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<sup>7</sup> For purposes of Article 15.9:

- (a) **counterfeit trademark goods** means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and
- (b) **pirated copyright goods** means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

country, including, *inter alia*, issues such as development of human capital and legal framework.

3. Each Party shall take measures, as appropriate, to prevent or control licensing practices or conditions, pertaining to intellectual property rights, which may adversely affect the international transfer of technology and which constitute an abuse of intellectual property rights by right holders.

#### *Cooperation*

4. The Parties shall cooperate and collaborate with a view to ensuring effective protection of intellectual property rights and the prevention of trade in goods or services infringing intellectual property rights, subject to their respective legislation, rules, regulations, and government policies. Such cooperation may include:

- (a) the exchange, between relevant agencies responsible for the enforcement of intellectual property rights, of information concerning infringement of intellectual property rights;
- (b) the encouragement of public awareness regarding the importance of intellectual property protection and the function of intellectual property protection systems to their respective nationals;
- (c) the improvement of intellectual property protection systems and their operation; or
- (d) the promotion of the development of contacts and cooperation among their respective agencies, including enforcement agencies, educational institutions and other organizations with an interest in the field of intellectual property rights.

5. A Party shall, upon request of the other Party, give proper consideration to any specific cooperation proposal made by the other Party related to the protection and/or enforcement of intellectual property rights.