

## **CHAPTER 11**

### **INTELLECTUAL PROPERTY RIGHTS**

#### **Article 11.1 : Definitions**

For the purposes of this Chapter:

**intellectual property** refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement, namely copyright and related rights; trademarks; geographical indications; industrial designs; patents; layout designs (topographies) of integrated circuits; protection of undisclosed information; and also includes the protection of plant varieties.

#### **Article 11.2 : Basic Principles**

1. The Parties recognise the importance of intellectual property in promoting economic and social development, particularly in the digital economy, technological innovation and trade.
2. The Parties recognise the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected subject matter.

#### **Article 11.3 : General Provisions**

1. Each Party shall provide in its territory to the nationals of the other Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce those rights do not themselves become barriers to legitimate trade.
2. A Party may provide for more extensive protection and enforcement of intellectual property rights under its law than this Chapter requires, provided that the additional protection and enforcement are not inconsistent with this Chapter.
3. The Parties affirm their existing rights and obligations under the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which both Parties are party.
4. In respect of all categories of intellectual property covered by this Chapter, each Party shall accord to the nationals of the other Party treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property rights and any benefits derived from such rights.<sup>1</sup>

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<sup>1</sup> For the purposes of this Chapter, a 'national' of a Party shall include, in respect of the relevant right, any person of that Party that would meet the criteria for eligibility for protection of that right provided for in the agreements referred to in Article 11.5.1 and the TRIPS Agreement.

5. The obligation provided for in paragraph 4 is subject to:
- (a) the limitations and exceptions provided in the TRIPS Agreement and those multilateral agreements concluded under the auspices of World Intellectual Property Organization (hereinafter referred to as “WIPO”); and
  - (b) the relevant reservations permitted by those multilateral agreements concluded under the auspices of WIPO.
6. Each Party shall establish and maintain transparent intellectual property rights regimes and systems that:
- (a) provide certainty over the protection and enforcement of intellectual property rights;
  - (b) minimise the administrative costs required for businesses to comply with its intellectual property system; and
  - (c) facilitate international trade through the dissemination of ideas, technology and creative works.
7. The Parties shall be free to establish their own regime for the exhaustion of intellectual property rights.

#### **Article 11.4 : Trademarks**

1. Neither Party shall require, as a condition of registration, that trademarks be visually perceptible, nor shall either Party deny registration of a trademark solely on the grounds that its sign is composed of a sound or a scent.<sup>2</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 with respect to 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, the likelihood of confusion shall be presumed.
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.

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<sup>2</sup> A Party may require an adequate description, which can be represented graphically, of the trademark.

5. Neither Party shall require, as a condition for determining that a trademark is a well-known mark, that the trademark 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 trademark as well-known.

6. Article 6bis of the *Paris Convention for the Protection of Industrial Property*, done on 20 March 1883 shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark,<sup>3</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 mistakes, or deception, risk of association of the trademark with a well-known trademark, or constitutes unfair exploitation of the reputation of the well-known trademark.

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 appeal a final refusal judicially. Each Party shall provide that third parties may oppose the registration of a trademark. Each Party shall provide a publicly available electronic database of trademark applications and trademark registrations.

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

10. Neither Party shall require recordation of trademark licenses to establish the validity of the license, to assert any rights in a trademark, or for other purposes.

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

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<sup>3</sup> For the purposes of determining whether a trademark is well-known, neither Party shall require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods and services.

## Article 11.5 : Copyright and Related Rights

1. Each Party shall comply with Articles 1 through 21 of the *Berne Convention for the Protection of Literary and Artistic Works*, done at 24 July 1971 (hereinafter referred to as the “Berne Convention”) and the Appendix thereto. However, the Parties shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of the Berne Convention or the rights derived therefrom.
2. Each Party shall provide that authors,<sup>4</sup> producers of phonograms, and broadcasting organisations<sup>5</sup> have the right to authorise or prohibit all reproduction of their works, phonograms and broadcasts<sup>6</sup> in any manner or form.
3. Each Party shall provide performers with the right to prohibit the reproduction of a fixation of a performance<sup>7</sup> where such fixation has been made without the authorisation of the performer.
4. Each Party may provide for limitations or exceptions to the rights described in paragraphs 2 and 3 in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.
5. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by copyright and related rights holders in connection with the exercise of their rights under each Party’s domestic laws and that restrict acts, in respect of their works, which are not authorised by the copyright and related rights holders concerned or permitted by law.
6. Each Party may provide for exceptions and limitations to measures implementing paragraph 5 in accordance with its domestic laws and the relevant international agreements to which it is party.
7. Each Party shall provide for adequate and effective legal protection against any person knowingly performing any of the following acts knowing, or having reasonable grounds to know, that by doing so, it will induce, enable, facilitate or conceal an infringement of any copyright or related rights as provided by the domestic laws of the Party:

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<sup>4</sup> A Party may provide that an author includes a person by whom the arrangements necessary for the making of a phonogram are undertaken.

<sup>5</sup> For the purpose of this Chapter, authors, performers, producers of phonograms and broadcasting organisations refer also to any successors in title.

<sup>6</sup> With respect to the protection of phonograms, a Party may apply the criterion of fixation instead of the criterion of publication. With respect to the protection of broadcasts, a Party may protect broadcasts only if the headquarter of the broadcasting organisation is situated in the other Party’s territory and the broadcast was transmitted from a transmitter situated in the other Party’s territory.

<sup>7</sup> With respect to this Chapter, a “performance” means a performance fixed in a phonogram unless otherwise specified.

- (a) the removal or alteration of any electronic rights management information<sup>8</sup> without authority; or
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public, without authority, of works or copies of the works or other subject matter protected under this Chapter knowing that electronic rights management information has been removed or altered without authority.

#### **Article 11.6 : Enforcement**

1. Each Party shall ensure that the measures, procedures and remedies are available under the Parties' legislation so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter.
2. Each Party shall provide for effective enforcement procedures to curtail repetitive copyright and related rights infringement by means of the internet.

#### **Article 11.7 : Contact Points**

The Parties shall designate contact points to facilitate communications between the Parties on any matter covered by this Chapter, and provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

#### **Article 11.8 : Exchange of Information**

1. A Party shall, on the request of the other Party, provide information relating to:
  - (a) any new laws that enter into effect in relation to intellectual property;
  - (b) changes to, and developments in, the implementation of intellectual property systems aimed at promoting the effective and efficient registration or grant of intellectual property rights; and
  - (c) developments in approaches to intellectual property rights enforcement.
2. Any information provided under this Article shall be conveyed through the contact points referred to in Article 11.7.

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<sup>8</sup> For the purposes of this Chapter, "rights management information" means any information provided by right holders which identifies the work or other subject matter covered by this Chapter, the author or any other right holder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information.

### **Article 11.9 : Co-operation**

1. The Parties agree to co-operate with a view to ensuring effective protection of intellectual property rights and eliminating trade in goods or services infringing intellectual property rights subject to their respective laws, rules, regulations and government policies.
2. The Parties shall encourage and facilitate the development of contacts and co-operation between the Parties' respective government agencies, educational institutions, and other organisations with an interest in the field of intellectual property rights.
3. A Party shall, on the request of the other Party, give due consideration to any specific co-operation proposal made by the other Party relating to the protection or enforcement of intellectual property rights.
4. Any proposal for co-operation shall be conveyed through the contact points referred to in Article 11.7.

### **Article 11.10 : Genetic Resources, Traditional Knowledge and Folklore**

Subject to each Party's international obligations, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions or folklore.

### **Article 11.11 : Consultations**

1. A Party may at any time request consultations with the other Party with a view to seeking a timely and mutually satisfactory resolution in relation to any intellectual property issue, including enforcement, within the scope of this Chapter.
2. Such consultations shall be conducted through the Parties' designated contact points, and shall commence within 30 days of the receipt of the request for consultations, unless the Parties mutually determine otherwise. In the event that consultations fail to resolve any such issue, the requesting Party may refer the issue to the Joint Commission for consideration.
3. Any action taken pursuant to paragraphs 1 and 2 is without prejudice to the rights and obligations of the Parties under Chapter 19 (Dispute Settlement) or under the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes*.