

## **CHAPTER TWELVE**

### **INTELLECTUAL PROPERTY RIGHTS**

#### **Article 12.1: Scope of Intellectual Property**

For purposes of this Chapter, “intellectual property” means copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits, and undisclosed information, as referred to in Sections 1 through 7 of Part II of the TRIPS Agreement.

#### **Article 12.2: General Principles**

1. The Parties shall ensure adequate, effective, and non-discriminatory protection of intellectual property rights and provide for appropriate measures for the enforcement of such rights against infringement thereof, in accordance with this Chapter and the international agreements related to intellectual property acceded to by the Parties, including the TRIPS Agreement.
2. Nothing in this Chapter shall prevent a Party from implementing in its law more extensive protection and enforcement of intellectual property rights than is required by this Chapter, provided that such protection and enforcement does not contravene this Chapter.
3. Each Party shall accord to the nationals of the other Party treatment no less favorable than that it accords to its own nationals with regard to the protection<sup>1</sup> of intellectual property rights, subject to the exceptions provided in the TRIPS Agreement and in the multilateral agreements administered by the *World Intellectual Property Organization* (hereinafter referred to as “WIPO” in this Chapter), to which either Party is a party.
4. With the object of making the protection and enforcement of intellectual property rights transparent, each Party shall ensure that all laws, regulations, and procedures concerning the protection and enforcement of

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<sup>1</sup> For purposes of this paragraph, “protection” includes (1) 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, (2) the prohibition on circumvention of effective technological measures set out in Article 12.3.2, and (3) the rights and obligations concerning rights management information set out in Article 12.3.3

intellectual property rights are in writing and are published<sup>2</sup>, or where publication is not practicable, made publicly available, in such a manner as to enable governments and right holders to become acquainted with them.

5. Further to Article 1.4 (Relations to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TRIPS Agreement.

6. The Parties recognize the principles established in the *Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2), done at Doha, Qatar on 14 November 2001 by the WTO at its Fourth Ministerial Conference.

### **Article 12.3: Copyright and Related Rights**

1. Each Party shall provide to:

- (a) authors of works the exclusive right to authorize or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them; and
- (b) performers and producers of phonograms the exclusive right to authorize or prohibit the making available to the public of their performances fixed in phonograms and phonograms, respectively, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

2. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers, or producers of phonograms in connection with the exercise of their rights and that restrict acts, in respect of their works, performances, or phonograms, which are not authorized by the authors, the performers, or the producers of phonograms concerned or permitted by each Party's law.

3. Each Party shall provide adequate and effective legal remedies against any person knowingly removing or altering any electronic rights management

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<sup>2</sup> For greater certainty, a Party may satisfy the requirement in this paragraph to publish a law, regulation, or procedure by making it available to the public on the Internet.

information<sup>3</sup> without authority knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related rights.

4. Where a party recognizes the establishment of collective management organizations, the Party shall endeavor to foster the establishment of appropriate organizations for the collective management of copyright and related rights. Each Party shall encourage such organizations to operate in a manner that is fair, efficient, publicly transparent, and accountable to their members, which may include open and transparent record keeping of the collection and distribution of royalties<sup>4</sup>. In addition, the Parties recognize the importance of fostering cooperation between their respective collective management organizations for the purposes of mutually ensuring easier licensing of content among the Parties, as well as encouraging<sup>5</sup> mutual transfer of royalties for use of works or other copyright-protected subject matters of the nationals of the other Party.

#### **Article 12.4: Trademarks**

1. The Parties shall grant adequate and effective protection to trademark right holders of goods and services.

2. Each Party shall provide that trademarks shall include collective, certification, and sound marks, and may include scent 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 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

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<sup>3</sup> For purposes of this Chapter, rights management information means information which identifies the work, the author of the work, the owner of any right in the work, or the performer, the performance of the performer, the producer of the phonogram, the phonogram, the owner of any right in the performance or phonogram, or information about the terms and conditions of use of the work, the performance or the phonogram, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a fixed performance or a phonogram or appears in connection with the communication of a work, or with the communication or making available of a fixed performance or a phonogram to the public.

<sup>4</sup> For greater certainty, "royalties" may include equitable remuneration.

<sup>5</sup> For greater certainty, "encouraging" does not require a Party to intercede in any contractual arrangements between collective management organizations.

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. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Parties making rights available on the basis of use.

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.

#### **Article 12.5: Well-Known Trademarks**

Article 6bis of the *Paris Convention for the Protection of Industrial Property* (1967) (hereinafter referred to as the “Paris Convention”) shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified as a well-known trademark<sup>6</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.

#### **Article 12.6: Bad Faith Trademarks**

Each Party shall provide that its competent authority has the authority to cancel a registration of a trademark where the application to register the trademark was made in bad faith in accordance with its laws and regulations.

#### **Article 12.7: Industrial Designs**

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. A Party may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. A Party may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

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<sup>6</sup> For purposes 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.

2. Each Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

#### **Article 12.8: Unfair Competition**

1. Each Party shall provide for effective protection against acts of unfair competition in accordance with the Paris Convention.

2. Each Party shall, subject to its laws and regulations, endeavor to provide the legal means to prevent the use of the unregistered appearance of a product, only if the contested use results from copying the unregistered appearance of such product. Such use shall at least cover assigning, leasing, exhibition for assigning or leasing, importing or exporting goods.

#### **Article 12.9: Country Names**

Each Party shall provide the legal means for interested persons to prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good.

#### **Article 12.10: Enforcement of Intellectual Property Rights**

1. 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 as the author, publisher, performer, producer, or broadcasting organizations of the work, performance, phonogram, or broadcast in the usual manner is the designated right holder in such work, performance, phonogram, or broadcast.

2. Each Party confirms that the enforcement procedures which permit effective action against infringement of intellectual property rights under its laws, including civil and criminal remedies, shall be available to the same extent with respect to acts of infringement of copyright or related rights and trademarks in the digital environment.

3. Each Party shall take effective measures to curtail repetitive infringement of copyright and related rights on the Internet or other digital network.

### **Article 12.11: Cooperation and Consultation**

1. The Parties, upon request of a Party, shall review the implementation and operation of this Chapter in the Joint Committee in order to avoid or remedy trade distortions and to improve the level of protection and enforcement of intellectual property rights. If problems in the area of protection and enforcement of intellectual property rights affecting trading conditions were to occur, the Parties shall have consultations in the Joint Committee at the request of a Party, with a view to reaching mutually satisfactory solutions to the problems.

2. The Parties, upon request of a Party, shall hold expert-level consultative meetings to discuss ways to facilitate cooperation on any matters between the Parties regarding protection and enforcement of intellectual property rights, including new developments with respect to international agreements and the activities of international organizations such as the WTO and the WIPO.