

13 INTELLECTUAL PROPERTY

ARTICLE 1

Purpose and Definitions

1. The purpose of this Chapter is to increase the benefits from trade and investment through the protection and enforcement of intellectual property rights.
2. For the purposes of this Chapter:
 - (a) “intellectual property rights” refers to copyright and related rights; rights in trade marks, geographical indications, industrial designs, patents, and layout-designs (topographies) of integrated circuits; rights in plant varieties; and rights in undisclosed information; as defined and described in the WTO TRIPS Agreement;
 - (b) “WIPO” means the World Intellectual Property Organisation; and
 - (c) “WTO TRIPS Agreement” means the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

ARTICLE 2

Adherence to International Instruments

1. Each Party reaffirms its commitment to the provisions of the WTO TRIPS Agreement.
2. Each Party affirms that it has ratified or acceded to the following agreements, as revised and amended:
 - (a) the Berne Convention for the Protection of Literary and Artistic Works (1971) (the Berne Convention);
 - (b) the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974) (the Brussels Convention);
 - (c) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1980);
 - (d) the International Convention for the Protection of New Varieties of Plants (1991);

(e) the Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks (1979);

(f) the Paris Convention for the Protection of Industrial Property (1967) (the Paris Convention);

(g) the Patent Cooperation Treaty (1970);

(h) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989);

(i) the WIPO Copyright Treaty (1996) (WCT);

(j) the WIPO Performances and Phonograms Treaty (1996) (WPPT);

(k) the Singapore Treaty on the Law of Trademarks (2006); and

(l) the Convention Establishing the World Intellectual Property Organization (1967) (the WIPO Convention).

3. Each Party reaffirms its rights and obligations under the international agreements set out in paragraph 2 of this Article.

4. The Parties agree to comply with the provisions of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs concluded at Geneva on 2 July 1999, subject to the enactment of laws necessary to apply those provisions in their respective territories.

ARTICLE 3

Storage of Intellectual Property in Electronic Media

Copies of copyright material to which the right of reproduction applies shall include electronic copies of works, sound recordings, and cinematographic films. This is subject to limitations or exceptions as permitted under the laws of the Parties.

ARTICLE 4

Term of Protection for Copyright

1. Each Party shall provide that where the term of protection of a work (including a photographic work), performance or sound recording is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and

(b) on a basis other than the life of a natural person, the term shall be:

(i) not less than 70 years from the end of the calendar year of the first authorised publication of the work, performance or sound recording; or

(ii) failing such authorised publication within 50 years from the creation of the work, performance or sound recording, not less than 70 years from the end of the calendar year of the creation of the work, performance or sound recording.

ARTICLE 5

Effective Technological Measures

1. Each Party shall provide that any person who:

(a) knowingly, or having reasonable grounds to know, circumvents without authority any effective technological measure that controls access to a protected work, performance, sound recording or other subject matter; or

(b) manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products or components, or offers to the public, or provides services, that:

(i) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure;

(ii) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or

(iii) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure,

shall be liable and subject to civil remedies. Each Party shall provide for criminal procedures and penalties to be applied where any person is found to have engaged wilfully and for the purposes of commercial advantage in any of the above activities. Each Party may provide that such criminal procedures and penalties do not apply to a non-profit library, archive, educational institution or public non-commercial broadcasting entity.

2. "Effective technological measure" means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, sound recording or other protected subject matter, or protects any copyright.

3. Each Party may provide for exceptions to the obligations in paragraph 1 of this Article, provided that such exceptions do not impair the adequacy of legal protection or the effectiveness of the legal remedies that the Party provides against the circumvention of effective technological measures.

4. A Party may derogate from paragraph 3 of this Article with regards to exceptions which it may provide for lawfully authorized activities carried out by government employees, agents or contractors for the purpose of law enforcement, intelligence, national defence, essential security or similar government activities.

ARTICLE 6

Rights Management Information

1. In order to provide adequate and effective legal remedies to protect rights management information:

(a) each Party shall provide that any person who without authority, and knowingly, or, with respect to civil remedies, having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any copyright:

(i) knowingly removes or alters any rights management information;

(ii) distributes or imports for distribution rights management information knowing that the rights management information has been altered without authority; or

(iii) distributes to the public, imports for distribution, broadcasts, communicates or makes available to the public copies of works or sound recordings, knowing that rights management information has been removed or altered without authority,

shall be liable and subject to civil remedies. Each Party shall provide for criminal procedures and penalties to be applied where any person is found to have engaged wilfully and for the purposes of commercial advantage in any of the above activities. Each Party may provide that these criminal procedures and penalties do not apply to a non-profit library, archive, educational institution or public non-commercial broadcasting entity.

(b) “rights management information” means:

(i) electronic information that identifies a work, performance, or sound recording; the author of the work, the performer of the performance, or the producer of the sound recording; or the owner of any right in the work, performance or sound recording; or

(ii) electronic information about the terms and conditions of the use of the work, performance or sound recording; or

(iii) any electronic numbers or codes that represent such information,

when any of these items is attached to a copy of the work, performance or sound recording or appears in connection with the communication or making available of a work, performance or sound recording to the public. Nothing in this paragraph obligates a Party to require the owner of any right in the work, performance or sound recording to attach rights management information to copies of the work, performance or sound recording, or to cause rights management information to appear in connection with a communication of the work, performance or sound recording to the public.

ARTICLE 7

Protection of Encrypted Programme-Carrying Satellite Signals

1. Each Party shall make it a criminal offence to:

(a) manufacture, assemble, modify, import, export, sell, lease or otherwise distribute 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 programme-carrying satellite signal without the authorisation of the lawful distributor of such signal; and

(b) wilfully receive and make use of, or further distribute, a programme-carrying signal that originated as an encrypted programme-carrying satellite signal knowing that it has been decoded without the authorisation of the lawful distributor of the signal.

2. In relation to the activities described in subparagraphs 1(a) and 1(b), each Party shall provide for civil remedies for any person that holds an interest in the encrypted programme-carrying satellite signal or its content.

ARTICLE 8

Presumptions for Copyright

1. In civil, criminal and, if applicable, administrative procedures involving copyright, each Party shall provide for a presumption that:

(a) in the absence of evidence to the contrary, the natural person or legal entity whose name is indicated as the author, producer, performer or publisher of the work, performance or sound recording in the usual manner is the designated right holder in the work, performance or sound recording; and

(b) in the absence of evidence to the contrary, that copyright subsists in such subject matter in accordance with its domestic law.

ARTICLE 9

Civil Enforcement of Intellectual Property Rights

1. In civil judicial proceedings concerning the acts described in Article 5 and Article 6, each Party shall provide that its judicial authorities shall have the authority to order or award at least:

(a) provisional measures, including the seizure of devices and products suspected of being involved in the proscribed activity;

(b) damages;¹

(c) payment to a prevailing right holder of court costs and fees and reasonable attorney's fees by the party engaged in the proscribed activity at the conclusion of the civil judicial proceeding; and

(d) destruction of the devices and products found to be involved in the proscribed activity.

2. A Party may provide that damages shall not be available against a non-profit library, archive, education institution or public non-commercial broadcasting entity that sustains the burden of proving that it was not aware or had no reason to believe that its acts constituted a proscribed activity.

¹ Each Party may determine what constitutes 'damages' for the purpose of this Article.

ARTICLE 10

Measures to Prevent the Export of Goods that Infringe Copyright or Trade Marks

Each Party, on receipt of information or complaints, shall take measures to prevent the export of goods that infringe copyright or trade marks, in accordance with its laws, rules, regulations, directives or policies.

ARTICLE 11

Criminal Procedures and Remedies

1. Each Party shall provide for criminal procedures and penalties to be applied to wilful copyright piracy on a commercial scale. Wilful copyright piracy on a commercial scale includes: (i) significant wilful infringements of copyright that have no direct or indirect motivation of financial gain; and (ii) wilful infringements for the purposes of commercial advantage or financial gain.

2. Specifically, each Party shall provide:

(a) penalties that include imprisonment and monetary fines sufficiently high to deter future acts of infringement consistent with a policy of removing the monetary incentive of the infringer. Also, each Party shall encourage its judicial authorities to impose fines at levels sufficient to provide a deterrent to future infringements;

(b) that its judicial authorities have the authority to order the seizure of suspected pirated goods, any related materials and implements that have been used in the commission of the offence, any assets traceable to the infringing activity and documentary evidence relevant to the offence that fall within the scope of the order. Items that are subject to seizure pursuant to such judicial order need not be individually identified so long as they fall within general categories specified in the order;

(c) that its judicial authorities shall have the authority, except in exceptional cases, to order the forfeiture and destruction of all pirated goods and, with respect to wilful copyright piracy, order the forfeiture and destruction of materials and implements that have been used in the creation of infringing goods. Each Party shall further provide that such forfeiture and destruction shall occur without compensation to the defendant; and

(d) that the appropriate authorities, as determined by each Party, shall have the authority to initiate criminal legal action *ex officio* with

respect to the offences described in this Article without the need for a formal complaint by a private party or right holder.

ARTICLE 12

Limitation on Liability of Service Providers

1. Each Party shall provide:

(a) legal incentives for service providers to cooperate with copyright owners in deterring the unauthorised storage and transmission of copyrighted materials; and

(b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth in this Article.²

2. These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or restrain certain actions for the following functions and shall be confined to those functions:

(a) transmitting, routing or providing connections for material without modification of its content, or the intermediate and transient storage of such material in the course thereof;

(b) caching carried out through an automatic process;

(c) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and

(d) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

3. These limitations shall apply only where the service provider does not initiate the chain of transmission of the material, and does not select the material or its recipients (except to the extent that a function described in subparagraph 2(d) in itself entails some form of selection).

4. Qualification by a service provider for the limitations as to each function in subparagraphs 2(a) through 2(d) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in paragraphs 5 to 8 of this Article.

² Subparagraph (b) is without prejudice to the availability of defences to copyright infringement that are of general applicability.

5. With respect to functions referred to in subparagraph 2(b), the limitations shall be conditioned on the service provider:

- (a) permitting access to cached material in significant part only to users of its system or network who have met conditions on user access to that material;
- (b) complying with rules concerning the refreshing, reloading or other updating of the cached material when specified by the person making the material available online in accordance with a relevant industry standard data communications protocol for the system or network through which that person makes the material available that is generally accepted in the Party's territory;
- (c) not interfering with technology used at the originating site consistent with industry standards generally accepted in the Party's territory to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and
- (d) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.

6. With respect to the functions referred to in subparagraphs 2(c) and 2 (d), the limitations shall be conditioned on the service provider:

- (a) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;
- (b) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with paragraph 10 of this Article; and
- (c) publicly designating a representative to receive such notifications.

7. Eligibility for the limitations in this Article shall be conditioned on the service provider:

- (a) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and

(b) accommodating and not interfering with standard technical measures accepted in the Party's territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.

8. Eligibility for the limitations in this Article may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

9. If the service provider qualifies for the limitations with respect to the functions referred to in subparagraph 2(a), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts or to taking reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in paragraph 2 of this Article, court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts and other remedies that a court may find necessary provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider's communications network, each Party shall provide that such relief shall be available only where the service provider has received notice of the court order proceedings referred to in this paragraph and an opportunity to appear before the judicial authority.

10. For purposes of the notice and take down process for the functions referred to in subparagraphs 2(c) and 2(d), each Party shall establish appropriate procedures for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.

11. If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available

on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the person giving the original effective notification seeks judicial relief within a reasonable time.

12. Each Party shall provide for an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

13. For purposes of the functions referred to in subparagraph 2(a), "service provider" means a provider of transmission, routing or connections for digital online communications without modification of their content between or among points specified by the user of material of the user's choosing, and for purposes of the functions referred to in subparagraphs 2(b) through 2(d) "service provider" means a provider or operator of facilities for online services or network access.

ARTICLE 13

Cooperation on Enforcement

The Parties agree to cooperate with a view to eliminating trade in goods infringing intellectual property rights, subject to their respective laws, rules, regulations, directives or policies. Such cooperation shall include:

- (a) the notification of contact points for the enforcement of intellectual property rights;
- (b) the exchange, between respective agencies responsible for the enforcement of intellectual property rights, of information concerning infringement of intellectual property rights;
- (c) policy dialogue on initiatives for the enforcement of intellectual property rights in multilateral and regional fora; and
- (d) such other activities and initiatives for the enforcement of intellectual property rights as may be mutually agreed between the Parties.

ARTICLE 14

Cooperation on Education and Exchange of Information on Protection, Management and Exploitation of Intellectual Property Rights

The Parties, through their competent agencies, agree to:

- (a) exchange information and material on programmes pertaining to intellectual property rights education and awareness, and to commercialisation of intellectual property, to the extent permissible under their respective laws, rules, regulations and directives; and
- (b) encourage and facilitate the development of contacts and cooperation between their respective government agencies, educational institutions, organisations and other entities in the field of intellectual property rights protection and development, including in the education and training of patent agents.

ARTICLE 15

Settlement of Disputes relating to Domain Names and Trade Marks

Both Parties shall continue to monitor and support, where appropriate, endeavours to develop international policy or guidelines governing the resolution of disputes relating to domain names and trade marks.