

CHAPTER [XX] INTELLECTUAL PROPERTY

Section A – General Provisions and Principles

Article X.1

General Provisions

1. Each Party affirms the rights and obligations under the WTO Agreement on Trade Related Aspect of Intellectual Property Rights, and any other multilateral agreement related to intellectual property to which it is a Party.
2. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice, in a manner consistent with the objectives and principles of the TRIPS Agreement and of this Chapter.

Article X.2

Objectives

The objectives of this Chapter are to:

- a) Facilitate access, production and commercialisation of innovative and creative products and foster trade and investment between the Parties contributing to a more sustainable, equitable and inclusive economy for the Parties;
- b) Achieve an adequate and effective level of protection and enforcement of intellectual property rights that provides incentives and rewards to innovation while contributing to the effective transfer and dissemination of technology and favouring social and economic welfare and the balance between the rights of the holders and the public interest;
- c) Foster measures that will help the Parties to promote research and development, and access to knowledge, including to a rich public domain.

Article X.3

Nature and Scope of Obligations

1. For the purposes of this Agreement, intellectual property rights refer to all categories of intellectual property that are the subject of sections 1 through 7 of Part II of the TRIPS Agreement and Article X.9 through Article X.43 of this Chapter.
2. Protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967).
3. Nothing shall prevent a Party from adopting measures necessary to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology, provided that such measures are consistent with the provisions of this Chapter.

4. The Parties acknowledge the provisions in the TRIPS Agreement regarding competition.
5. This Chapter does not create any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and enforcement of law in general.
6. No Party shall be obliged to implement in its law more extensive protection than is required by this Chapter. This Chapter does not preclude the Parties from applying provisions of domestic law introducing higher standards for the protection and enforcement of intellectual property, provided that they do not violate the provisions of this Chapter.

Article X.4
Principles

1. Each Party recognises that the protection and enforcement of intellectual property rights can and must be done in a manner conducive to economic, social and scientific progress. Each Party shall ensure the enforcement of intellectual property rights within its own legal system and practice.
2. In formulating or amending its laws and regulations, each Party may establish exceptions and flexibilities permitted by the multilateral instruments to which the Parties are Signatories.
3. The Parties support the achieving of the United Nations Sustainable Development Goals (SDGs).
4. The Parties support the World Health Assembly Resolution WHA 60.28 and the Pandemic Influenza Preparedness (PIP) Framework adopted on The Sixty-fourth World Health Assembly.
5. The Parties recognise the importance of promoting the implementation of Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property, adopted by the World Health Assembly on 24 of May 2008 (Resolution WHA 61.21 as amended by Resolution WHA 62.16).
6. The Parties acknowledge the Development Agenda recommendations, adopted in 2007 by the General Assembly of the World Intellectual Property Organization (WIPO).
7. Where the acquisition of an intellectual property right is subject to the right being granted or registered, each Party shall make best efforts to ensure the procedures for granting or registration of the right are conducive to the granting or registration within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

Article X.5
National Treatment

Each Party shall accord to the nationals of another Party treatment no less favourable than that it accords to its own nationals with regard to the protection¹ of intellectual property rights covered

¹ For the purposes of Article X.5 “protection” shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

by this Chapter, subject to the exceptions already provided for in Article 3 and 5 of the TRIPS Agreement.

Article X.6

Protection of Biodiversity and Traditional knowledge

1. The Parties recognise the importance and value of biological diversity and its components and of the associated traditional knowledge, innovations and practices of indigenous and local communities². The Parties furthermore reaffirm their sovereign rights over their natural resources and recognise their rights and obligations as established by the Convention of Biological Diversity of 1992 (henceforth referred to as CBD) with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilisation of these genetic resources.
 2. Recognising the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions, the parties agree that access to genetic resources for food and agriculture shall be subject to specific treatment in accordance with the International Treaty on Plant Genetic Resources for Food and Agriculture (2001).
 3. The Parties may, by mutual agreement, review this Article subject to the results and conclusions of multilateral discussions.
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Article X.7

Exhaustion

1. Each Party shall be free to establish its own regime for exhaustion of intellectual property rights subject to the provision of the TRIPS Agreement.
 2. In the area of copyright and related rights, exhaustion of rights applies only to the distribution to the public by sale or otherwise of the original of tangible works or tangible copies thereof.
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Article X.8

TRIPS Agreement and Public Health

1. The Parties recognise the importance of the declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 (hereinafter referred to as the “Doha Declaration”) by the Ministerial Conference of the WTO. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with the Doha Declaration.
 2. The Parties shall implement Article 31bis of the TRIPS Agreement, as well as the Annex and Appendix to the Annex related thereto, which entered into force on January 23, 2017.
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² For the purposes of Article X.6, "indigenous and local communities" may include descendants of enslaved Africans and small scale farmers.

Section B- Standards Concerning Intellectual Property Rights

Sub-Section 1

Copyright and related rights³

Article X.9

International Treaties

Each Party affirms its rights and obligations under the following international agreements taking into consideration that treaties are not binding on those that are not parties to them:

- a) The Berne Convention for the Protection of Literary and Artistic Works ('the Berne Convention');
- b) The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (hereinafter referred to as the "Rome Convention"); and,
- c) The Marrakesh Treaty to facilitate access for persons who are blind, visually impaired, or otherwise print disabled.
- d) The WIPO Copyright Treaty, adopted in Geneva on 20 December 1996; and
- e) The WIPO Performances and Phonograms Treaty, adopted in Geneva on 20 December 1996.
- f) Beijing Treaty on Audiovisual Performances.

Article X.10

Authors

Each Party shall provide for authors the exclusive right to authorise or prohibit:

1. Direct or indirect, temporary⁴ or permanent reproduction by any means and in any form, in whole or in part of their works;
2. Any form of distribution to the public by sale or otherwise of the original of their works or of copies thereof;
3. Any communication to the public of their works, by wire or wireless means.
4. The making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

³ Parties shall be free, in their domestic law, to use different names for the rights set out in this Sub-Section provided the agreed level of protection is ensured.

⁴ For the purposes of this Sub-Section, the term "temporary" means reproduction for a limited period and does not include incidental or ephemeral reproduction. By "incidental" or "ephemeral" we understand the type of reproduction having the sole purpose of making a work accessible instead of making a copy.

Article X.11
Performers

Each Party shall provide for performers the exclusive right to authorise or prohibit:

1. The fixation⁵ of their performances;
2. The direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of fixations of their performances;
3. The distribution to the public, by sale or otherwise, of the fixations of their performances.
4. The broadcasting by wireless means, and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation. This article also applies for broadcasting by wire means when the legislation of a Party allows it.
5. The making available to the public of fixations of their performances in such a way that members of the public may access them from a place and at a time individually chosen by them.

Article X.12
Producers of phonograms

Each Party shall provide for phonogram producers the exclusive right to authorise or prohibit:

1. The direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of their phonograms;
2. The distribution to the public, by sale or otherwise, of their phonograms, including copies thereof;
3. The making available to the public of their phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

Article X.13
Broadcasting Organisations

Each Party may stipulate the legal requirements in their domestic laws as to what is to be considered a broadcasting organisation and also shall provide them with the exclusive right to authorise or prohibit:

1. The fixation of their broadcasts;
2. The direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts;
3. The making available to the public, by wire or wireless means, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite in such a way that members of the public may access them from a place and at a time individually chosen by them.

⁵ Fixation means the embodiment of sounds or images, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

4. The distribution to the public, by sale or otherwise, of fixations of their broadcasts, and;
 5. The rebroadcasting of their broadcasts by wireless means, or where the domestic legislation so provides retransmission by wire means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.⁶
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Article X.14⁷

Right to remuneration for broadcasting and communication to the public of phonograms published for commercial purposes

1. Each Party shall provide a right in order to ensure that a remuneration is paid by the user to the performers and producers of phonograms, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public.
 2. Each Party shall provide either that the remuneration be claimed from the user by the performer or by the producer of a phonogram or by both. Each Party may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets the terms according to which performers and producers of phonograms shall share such remuneration.
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Article X.15

Term of protection

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and not less than for 50 years or, where the domestic legislation of the Party so provides, for 70 years after the author's death. With respect to photographic and cinematographic works each Party will establish the term of protection according to their domestic laws.
2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. In the case of anonymous or pseudonymous works, the term of protection shall run for not less than 50 years or, where the domestic legislation of the Party so provides, for 70 years, after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.

⁶ Each Party may grant more extensive rights as regards the communication to the public by broadcasting organisations.

⁷ Each Party may grant more extensive rights, in place of the right to remuneration or in addition to this right, as regards the broadcasting and communication to the public of phonograms published for commercial purposes, to performers and producers of phonograms.

4. The rights of performers in a performance otherwise than in a phonogram shall expire not less than fifty years after the date of the performance.

5. The rights of performers and producers of phonograms shall expire not less than 50 years or, where the domestic legislation of the Party so provides, 70 years after the fixation is lawfully published or lawfully communicated to the public.⁸ According to their domestic law, each Party may adopt effective measures in order to ensure that the profits generated during the 20 years of protection beyond 50 years are shared fairly between the performers and producers.

6. The term of protection of the rights of the broadcasting organisations shall be at least 20 years or, where the domestic legislation of the Party so provides, 50 years from the first broadcast.

7. The terms laid down in this Article shall be calculated from the 1st January of the year following the event which gives rise to them.

8. The terms of protection may exceed the periods provided for in this Article.

Article X.16
Resale Right

1. Each Party may provide, for the benefit of the author of graphic or plastic art, a resale right, defined as an inalienable right, which cannot be waived, even in advance, to receive a percentage of the price obtained from any resale of that work, after the first transfer of that work by the author.
2. The right referred to in paragraph 1 may apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.
3. Each Party may provide that the right referred to in paragraph 1 may not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and when the resale price does not exceed a minimum amount.
4. Each Party may provide that authors who are nationals of third countries and their successors in title may enjoy the resale right in accordance with this Article and the legislation of the Party concerned only if the legislation of the country of which the author or his/her successor in title is a national permits resale right protection in that country for authors from the Party concerned and their successors in title.

Article X.17
Cooperation on collective management of rights

⁸ Each Party may provide that the publication or lawful communication to the public of the fixation of the performance or of the phonogram must occur within a defined period of respectively the date of the performance (in the case of the performers) or the date of the fixation (in the case of producers of phonograms).

1. The Parties agree to promote cooperation, transparency and non-discrimination of collective management organisations, in particular as regards the revenues they collect, deductions applied to such revenue, the use of the royalties collected, the distribution policy and their repertoire, including in the digital environment.

2. Where a collective management organisation established in the territory of a Party represents a collective management organisation established in the territory of another Party by way of a representation agreement, each Party shall ensure that:

(a) the representing collective management organisation shall not discriminate against entitled members of the represented organisation;

(b) the representing collective management organisation must pay accurately, regularly, diligently, and in full transparency, the amounts owed to the represented organisation and provide the represented organisation with information on the amounts of revenue collected on its behalf and the deductions made.

Article X.18

Exceptions and limitations

1. Each Party shall provide for exceptions and limitations to the rights only in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holders.

2. Each Party shall provide that temporary acts of reproduction which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable:

(a) a transmission in a network between third parties by an intermediary; or

(b) a lawful use of a work or other subject-matter to be made, and which have no independent economic significance,

shall be exempted from the reproduction right.

Article X.19

Technological Protection Measures

Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by right holders in connection with the exercise of their rights under this Sub-Section and that restrict acts which are not authorised by the right holders concerned or permitted by law.

Each Party, where permissible in accordance to their domestic law may ensure that right holders make available to the beneficiary of an exception or limitation the means of benefiting from that exception or limitation, to the extent necessary to benefit from that exception or limitation.

Article X.20

Obligations concerning Rights Management Information

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

- (a) The removal or alteration of any electronic rights-management information;
- (b) The distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under this Sub-Section from which electronic rights-management information has been removed or altered without authorisation,

if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights.

2. For the purposes of this article "rights-management information" means any information provided by right holders which identifies the work or other subject-matter referred to in this Sub-Section, 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.

3. The subparagraph 1 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 or other subject-matter referred to in this Article.

4. The Parties shall ensure that this protection shall not harm non-infringing uses.

Sub-Section 2

Trademarks

Article X.21

International Agreements

Each Party:

- (a) shall comply with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957, as amended on 28 September 1979 ("Nice Classification")⁹; and,
- (b) shall make best efforts to comply with the Protocol related to the Madrid Agreement concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as last amended on 12 November 2007.

Article X.22

Registration Procedure

⁹ This obligation only applies to trademarks registered after the date of adoption of the Nice classification criteria or of accession to the instrument.

1. Each Party shall establish a system for the registration of trademarks in which each final negative decision, including the partial refusal of registration, issued by the relevant trademark administration, shall be notified in writing, duly reasoned and open to challenge.
 2. Each Party shall provide for the possibility to oppose applications to register trademarks or, where appropriate, the registration of trade marks. Such opposition proceedings shall be adversarial.
 3. Each Party shall provide a publicly available electronic database of applications and registrations of trademarks.
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Article X.23

Rights conferred by a trademark

The registered trademark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:

- (a) Any sign which is identical with the trademark in relation to goods or services which are identical with those for which the trademark is registered;
 - (b) Any sign where, because of its identity with, or similarity to, the trademark and the identity or similarity of the goods or services covered by the trademark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trademark.
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Article X.24

Well-known Trademarks

1. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.
 2. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, 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 registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.
 3. For the purpose of giving effect to protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement, each Party shall take into due consideration the principles established in the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.
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Article X.25

Invalidation of the registration application in bad faith

A trade mark shall be liable to be declared invalid where the application for registration of the trademark was made in bad faith by the applicant. Each Party may also provide that such a trademark shall not be registered.

Article X.26*Exceptions to the Rights Conferred by a Trademark*

1. Each Party shall provide for limited exceptions to the rights conferred by a trademark such as the fair use of descriptive terms, including in the case of geographical indications, and they may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.
 2. The trademark shall not entitle the owner to prohibit a third party from using:
 - (a) Their own name or address where that third party is a natural person;
 - (b) Indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services;
 - (c) The trademark where it is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts; provided he uses them in accordance with honest practices in industrial or commercial matters.
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Sub-Section 3*Designs**Article X.27***International Agreements**

Each Party shall make the best efforts to comply with the Geneva (1999) Act of the Hague Agreement Concerning the International Registration of Industrial Designs done at Geneva on 2 July 1999.

Article X.28*Protection of Registered Designs*

1. Each Party shall provide for the protection of independently created designs that are new and original¹⁰. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this article.
 2. The holder of a registered design shall have at least the right to use and prevent third parties not having the owner's consent at least from using and notably making, offering for sale, selling, putting on the market, importing, exporting, stocking such a product or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes.
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Article X.29*Term of Protection*

¹⁰ For the purpose of this Article, a Party may consider that a design having individual character is original.

The duration of protection available, including renewals, shall amount to at least 15 years from the date of filing the application.

Article X.30
Protection Conferred to Unregistered Designs

Each Party may establish legal means to prevent the use of unregistered designs, according to their domestic law.

Article X.31
Exceptions and Exclusions

1. Each Party may establish limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected 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.
 2. Design protection shall not extend to designs dictated essentially by technical or functional considerations.
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Article X.32
Relationship to Copyright

A design shall also be eligible for protection under the law of copyright of a Party when this protection is provided for by its legislation and the requirements are met, as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.

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