

## **CHAPTER 11 INTELLECTUAL PROPERTY**

### **Section A: General Provisions**

#### Article 11.1: Definition

For the purposes of this Chapter:

**intellectual property** refers to:

- (a) copyright, including copyright in computer programmes and in databases, and related rights;
- (b) patents and utility models;
- (c) trademarks;
- (d) industrial designs;
- (e) layout-designs (topographies) of integrated circuits;
- (f) geographical indications, and
- (g) protection of undisclosed information.

#### Article 11.2: Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of trade, investment, technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

#### Article 11.3: Abuse of Intellectual Property Rights

Nothing in this Chapter shall prevent a Party from adopting appropriate measures to prevent the abuse of intellectual property rights by right holders or to resort to practices that

unreasonably restrain trade or adversely affect the international transfer of technology, provided that such measures are consistent with this Agreement.

#### Article 11.4: Protection and Enforcement of Intellectual Property Rights

1. Each Party shall determine the appropriate method of enforcing this Chapter within its own legal system and practice.
2. A Party may provide, within its own legal system and practice, for a more extensive protection or enforcement of intellectual property rights than as required by this Chapter, provided that such protection or enforcement is consistent with this Chapter.

#### Article 11.5: International Agreements

The Parties affirm their rights and obligations under the following multilateral agreements:

- (a) Patent Cooperation Treaty of 19 June 1970, as revised by the Washington Act of 2001 (“Patent Cooperation Treaty”);
- (b) Paris Convention of 20 March 1883 for the Protection of Industrial Property, as revised by the Stockholm Act of 1967 (“Paris Convention”);
- (c) Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works, as revised by the Paris Act of 1971 (“Berne Convention”);
- (d) Madrid Protocol of 27 June 1989 relating to the Madrid Agreement concerning the International Registration of Marks (“Madrid Protocol”);
- (e) WIPO Performances and Phonogram Treaty of 20 December 1996 (“WPPT”);
- (f) Rome Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (“Rome Convention”);
- (g) WIPO Copyright Treaty of 20 December 1996 (“WCT”);
- (h) Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (“Budapest Treaty”);

- (i) Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted on 27 June 2013, and
- (j) TRIPS Agreement.

#### Article 11.6: Intellectual Property and Public Health

1. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter.
2. The Parties recognise the principles established in 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 and confirm that this Chapter is without prejudice to the Doha Declaration.

#### Article 11.7: National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property rights.
2. Notwithstanding paragraph 1, with respect to secondary uses of phonograms by means of analog communications and free over-the-air broadcasting, a Party may limit the rights of the performers and producers of the other Party to the rights its persons are accorded within the jurisdiction of that other Party.
3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:
  - (a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, and
  - (b) not applied in a manner that would constitute a disguised restriction on trade.

4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

#### Article 11.8: Transparency

1. Each Party shall endeavour, subject to its legal system and practice, to make information concerning application and registration of trademarks, geographical indications, industrial designs, patents and plant variety rights accessible for the general public.

2. The Parties also acknowledge the importance of informational materials, such as publicly accessible databases of registered intellectual property rights that assist in the identification of a subject matter that has fallen into the public domain.

3. Each Party may make available the information referred to in this Article in the English language.

#### Article 11.9: Application of Chapter to Existing Subject Matter and Prior Acts

1. Unless otherwise provided, this Chapter shall apply in respect of all subject matters existing at the date of entry into force of this Agreement and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter without unreasonably impairing the fair interest of non-Parties.

2. Unless otherwise provided in this Chapter, a Party shall not be required to restore protection to a subject matter that, on the date of entry into force of this Agreement for that Party, has fallen into the public domain in its territory.

3. This Chapter shall not apply to acts that occurred before the date of entry into force of this Agreement.

#### Article 11.10: Exhaustion of Intellectual Property Rights

Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system.

## **Section B: Cooperation**

### Article 11.11: Cooperation Activities and Initiatives

The Parties shall endeavour to cooperate on a subject matter covered by this Chapter, such as through appropriate coordination, training, and exchange of information between the respective intellectual property offices of the Parties, or other institutions, as determined by each Party. Cooperation activities and initiatives undertaken under this Chapter shall be subject to the availability of resources and on request, and on terms and conditions mutually agreed upon between the Parties. Cooperation may cover areas such as:

- (a) developments in domestic and international intellectual property policy;
- (b) intellectual property administration and registration systems;
- (c) education and awareness relating to intellectual property;
- (d) intellectual property issues relevant to:
  - (i) small and medium-sized enterprises;
  - (ii) science, technology and innovation activities;
  - (iii) the generation, transfer and dissemination of technology, and
  - (iv) empowering women and youth;
- (e) policies involving the use of intellectual property for research, innovation and economic growth;
- (f) implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of WIPO;
- (g) capacity-building;
- (h) enforcement of intellectual property rights, and
- (i) other activities and initiatives as may be determined by the Parties.

#### Article 11.12: Patent Cooperation

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems, as well as simplifying and streamlining the procedures and processes of their respective patent offices for the benefit of all users of the patent system and the public as a whole.

2. Further to paragraph 1, the Parties shall endeavour to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work. This cooperation may include:

- (a) making search and examination results available to the patent office of the other Party, and
- (b) exchanging information on quality assurance systems and quality standards relating to patent examination.

3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to cooperate to reduce differences in the procedures and processes of their respective patent offices.

### **Section C: Trademarks**

#### Article 11.13: Types of Signs Registrable as Trademarks

A Party shall not require, as a condition of registration, that a sign be visually perceptible, or deny the registration of a trademark only on the ground that the sign of which it is composed is a sound. Additionally, each Party shall make best efforts to register scent marks. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trademark.

#### Article 11.14: Collective and Certification Marks

Each Party shall provide that trademarks include collective marks and certification marks. A Party may treat certification marks as a separate category in its law, provided that

those marks are protected. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system.<sup>1</sup>

#### Article 11.15: Use of Identical or Similar Signs

Each Party shall provide that the owner of a registered trademark has the exclusive right to prevent third parties, that do not have the owner's consent, from using identical or similar signs, in the course of trade, for goods or services that are related 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.

#### Article 11.16: Exceptions

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

#### Article 11.17: Well-Known Trademarks

1. A Party shall not require as a condition for determining that a trademark is well-known that the trademark has been registered in that Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.

2. Article 6bis of 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>2</sup> whether registered or not, provided that the use of that trademark in relation to those goods or services indicates 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.

2. Each Party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the

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<sup>1</sup> Consistent with the definition of a geographical indication in Article 11.25, any sign or combination of signs shall be eligible for protection under one or more of the legal means for protecting geographical indications, or a combination of such means.

<sup>2</sup> In determining whether a trademark is well-known in a Party, that Party shall not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO of 20 to 29 September 1999.

4. Each Party shall provide for appropriate measures to refuse the application or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark<sup>3</sup>, for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well-known trademark. A Party may also provide such measures including in cases in which the subsequent trademark is likely to deceive.

#### Article 11.18: Procedural Aspects of Examination, Opposition and Cancellation

Each Party shall provide a system for the examination and registration of trademarks which shall, among others:

- (a) communicate to the applicant, in writing, the reasons for any refusal to register a trademark; this communication may be provided by electronic means;
- (b) provide to the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trademark;
- (c) provide an opportunity to oppose the registration of a trademark or to seek cancellation of a trademark, and
- (d) require administrative decisions in opposition and cancellation proceedings to be reasoned and in writing; these decisions may be provided by electronic means.

#### Article 11.19: Electronic Trademarks System

Each Party shall provide:

- (a) a system for the electronic application for, and maintenance of, trademarks, and
- (b) a publicly available electronic information system, including an online database, of trademark applications and of registered trademarks.

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<sup>3</sup> The Parties understand that a well-known trademark is one that was already well-known before, as determined by a Party, the application for, registration of or use of the first-mentioned trademark.



#### Article 11.20: Classification of Goods and Services

Each Party shall adopt or maintain a trademark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice, 15 June 1957, as revised and amended (“Nice Classification”). Such system shall provide that:

- (a) registrations and the publications of applications indicate the goods and services by their names, grouped according to the classes established by the Nice Classification;<sup>4</sup> and
- (b) goods or services may not be considered as being similar to each other on the ground that, in any registration or publication, they are classified in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication, they are classified in different classes of the Nice Classification.

#### Article 11.21: Term of Protection for Trademarks

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.

#### Article 11.22: Non-Recordal of a License

A Party shall not require recordal of trademark licenses:

- (a) to establish the validity of the license, or
- (b) as a condition for the use of a trademark by a licensee to be deemed to constitute use by the holder in a proceeding that relates to the acquisition, maintenance or enforcement of trademarks.

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<sup>4</sup> A Party that relies on translations of the Nice Classification shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published.

#### Article 11.23: Domain Names

1. In connection with each Party's system for the management of its country-code top-level domain ("ccTLD") domain names, the following shall be available:

- (a) an appropriate procedure for the settlement of disputes, based on, or modelled along the same lines as, the principles established in the Uniform Domain-Name Dispute-Resolution Policy, as approved by the Internet Corporation for Assigned Names and Numbers ("ICANN") or that:
  - (i) is designed to resolve disputes expeditiously and at low cost;
  - (ii) is fair and equitable;
  - (iii) is not overly burdensome, and
  - (iv) does not preclude resort to judicial proceedings, and
- (b) online public access to a reliable and accurate database of contact information concerning domain name registrants, in accordance with each Party's law and, if applicable, relevant administrator policies regarding the protection of privacy and personal data.

2. In connection with each Party's system for the management of ccTLD domain names, appropriate remedies shall be available at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trademark.

### **Section D: Country Names**

#### Article 11.24: 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.

## Section E: Geographical Indications

### Article 11.25: Recognition of Geographical Indications

1. **Geographical indication** means an indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.
2. The Parties recognise that geographical indications may be protected through a trademark or *sui generis* system or other legal means.

### Article 11.26: Administrative Procedures for the Protection of Geographical Indications

If a Party provides administrative procedures for the protection or recognition of geographical indications, whether through a trademark or a *sui generis* system, that Party shall, with respect to applications for that protection or petitions, ensure that its laws and regulations governing the filing of those applications or petitions are readily available to the public and clearly set out the procedures for these actions.

### Article 11.27: Date of Protection of a Geographical Indication

If a Party grants protection or recognition to a geographical indication, that protection or recognition shall commence no earlier than on the date of the filing<sup>5</sup> in the Party or the date of registration in the Party, as applicable.

## Section F: Patent<sup>6</sup>

### Article 11.28: Grace Period

Each Party shall disregard at least information contained in public disclosures used to determine if an invention is novel or has an inventive step, if such disclosure:

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<sup>5</sup> For greater certainty, the “date of the filing” referred to in this Article includes, as applicable, the priority date of filing under the Paris Convention.

<sup>6</sup> For greater certainty, a patent may include utility model in accordance with the laws and regulations of a Party.

- (a) was made by the patent applicant or by a person that obtained the information directly or indirectly from the patent applicant, and
- (b) occurred within 12 months prior to the date of the filing of the application in the territory of the Party.

#### Article 11.29: Procedural Aspects of Examination, Opposition and Invalidation of Certain Registered Patent

Each Party shall provide a system for the examination and registration of patents which shall, among others:

- (a) communicate to the applicant in writing, the reasons for any refusal to register a patent; this communication may be provided by electronic means;
- (b) provide to the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a patent;
- (c) provide interested parties with an opportunity to seek cancellation or invalidation of a registered patent, and, in addition, it may provide interested parties with an opportunity to oppose the registration of a patent, and
- (d) make decisions in opposition, cancellation, or invalidation proceedings to be reasoned and in writing; these decisions may be delivered by electronic means.

#### Article 11.30: Amendments, Corrections, and Observations

1. Each Party shall provide to an applicant for a patent with at least one opportunity to make amendments, corrections or observations in connection with its application.<sup>7</sup>
2. Each Party may provide a right holder of a patent with opportunities to make amendments or corrections after registration, provided that such amendments or corrections

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<sup>7</sup> A Party may provide that such amendments do not go beyond the scope of the disclosure of the invention, as of the date of filing.

do not change or expand the scope of the patent right as a whole, in accordance with each Party's laws and regulations.<sup>8</sup>

#### Article 11.31: Exceptions

A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the right holder, taking account of the legitimate interests of third parties.

### **Section G: Industrial Design**

#### Article 11.32: Grace Period

Each Party shall disregard at least information contained in public disclosures used to determine if a design is new or original, if such disclosure:

- (a) was made by the designer, applicant or by a person that obtained the information directly or indirectly from the designer or applicant, and
- (b) occurred within at least 12 months prior to the date of the filing of the application in the territory of that Party.

#### Article 11.33: Procedural Aspects of Examination, Opposition and Invalidation of Certain Registered Industrial Design

Each Party shall provide a system for the examination and registration of industrial designs which shall, among others:

- (a) communicate to the applicant in writing, the reasons for any refusal to register industrial design; this communication may be by electronic means;
- (b) provide to the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register industrial design;

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<sup>8</sup> It is understood that the amendments or corrections which do not change or expand the scope of the right means that the scope of the patent right stays the same as before or reduced.

- (c) provide an opportunity for interested parties to seek cancellation or invalidation of a registered industrial design, and in addition, may provide an opportunity for interested parties to oppose the registration of industrial design in accordance with its laws and regulations, and
- (d) make decisions in opposition, cancellation, or invalidation proceedings to be reasoned and in writing; these decisions may be delivered by electronic means.

#### Article 11.34: Amendments, Corrections and Observations

1. Each Party shall provide an applicant for industrial design with at least one opportunity to make amendments, corrections or observations in connection with its application.<sup>9</sup>
3. Each Party may provide a right holder of industrial design with opportunities to make amendments or corrections after registration, provided that such amendments or corrections do not change or expand the scope of the industrial design as a whole, in accordance with each Party's laws and regulations.<sup>10</sup>

#### Article 11.35: Industrial Design Protection

1. The Parties shall ensure that the requirements for securing or enforcing registered industrial design protection do not unreasonably impair the opportunity to obtain or enforce such protection.
2. The duration of protection available for registered industrial designs shall amount to at least 15 years from the date of filing.

#### Article 11.36: Exceptions

A Party may provide limited exceptions to the exclusive rights conferred by an industrial design, provided that such exceptions do not unreasonably conflict with a normal exploitation of the industrial design and do not unreasonably prejudice the legitimate interests of the right holder, taking account of the legitimate interests of third parties.

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<sup>9</sup> A Party may provide that such amendments do not go beyond the scope of the disclosure of the industrial design, as of the date of filing.

<sup>10</sup> It is understood that the amendments or corrections which do not change or expand the scope of the right means that the scope of the industrial design stays the same as before or reduced.

## Section H: Copyright and Related Rights

### Article 11.37: Definitions

For the purposes of Articles 11.38 and 11.40 through 11.48, with respect to performers and producers of phonograms:

**broadcasting** means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission, by satellite is also “broadcasting”; the transmission of encrypted signals is broadcasting if the means for decrypting are provided to the public by the broadcasting organisation or with its consent;

**communication to the public of a performance or a phonogram** means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;

**fixation** means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

**performance** means a performance fixed in a phonogram unless otherwise specified;

**performers** means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

**phonogram** means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;

**producer of a phonogram** means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;

**publication of a performance or phonogram** means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, provided that such copies are offered to the public in a reasonable quantity, and

**right to authorise or prohibit** refers to exclusive rights with respect to copyright and related rights.

#### Article 11.38: Right of Reproduction

Each Party shall provide<sup>11</sup> to authors, performers and producers of phonograms<sup>12</sup> the exclusive right to authorise or prohibit all reproduction of their works, performances or phonograms in any manner or form, including in electronic form.

#### Article 11.39: Right of Communication to the Public

Without prejudice to Article 11(1)(ii), Article 11bis(1)(i) and (ii), Article 11ter(1)(ii), Article 14(1)(ii), and Article 14bis(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorise or prohibit the 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.<sup>13</sup>

#### Article 11.40: Right of Distribution

Each Party shall provide to authors, performers and producers of phonograms the exclusive right to authorise or prohibit the making available to the public of the original and copies<sup>14</sup> of their works, performances and phonograms through sale or other transfer of ownership.

#### Article 11.41: Related Rights

1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms to:

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<sup>11</sup> For greater certainty, the Parties understand that it is a matter for each Party's law to prescribe that works, performances or phonograms in general or any specified categories of works, performances and phonograms are not protected by copyright or related rights, unless the work, performance or phonogram has been fixed in some material form.

<sup>12</sup> References to "authors, performers, and producers of phonograms" refer also to any of their successors in interest.

<sup>13</sup> The Parties understand that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. The Parties further understand that nothing in this Article precludes a Party from applying Article 11bis(2) of the Berne Convention.

<sup>14</sup> The expressions "copies" and "original and copies", that are subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.



- (a) performers and producers of phonograms that are nationals<sup>15</sup> of the other Party, and
  - (b) performances or phonograms first published or first fixed<sup>16</sup> in the territory of the other Party.<sup>17</sup> A performance or phonogram shall be considered first published in the territory of a Party if it is published in the territory of that Party within 30 days of its original publication.
2. Each Party shall provide to performers the exclusive right to authorise or prohibit:
- (a) the broadcasting and communication to the public of their unfixed performances, unless the performance is already a broadcast performance, and
  - (b) the fixation of their unfixed performances.
3. Each Party shall provide to performers and producers of phonograms the exclusive right to authorise or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means,<sup>18, 19</sup> and the making available to the public of those performances or phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.
4. Notwithstanding subparagraph 2(a) and Article 11.43, the application of the right referred to in subparagraph 2(a) to analog transmissions and non-interactive free over-the-air broadcasts, and exceptions or limitations to this right for those activities, is a matter of each Party's law.<sup>20</sup>

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<sup>15</sup> For the purposes of determining the criteria for eligibility under this Article with respect to performers, a Party may treat "nationals" as those who would meet the criteria for eligibility under Article 3 of the WPPT.

<sup>16</sup> For the purposes of this Article, fixation means the finalisation of the master tape or its equivalent.

<sup>17</sup> For greater certainty, in this paragraph with respect to performances or phonograms first published or first fixed in the territory of a Party, a Party may apply the criterion of publication, or alternatively, the criterion of fixation, or both. For greater certainty, consistent with Article 11.7, each Party shall accord to performances and phonograms first published or first fixed in the territory of the other Party treatment no less favourable than it accords to performances or phonograms first published or first fixed in its own territory.

<sup>18</sup> With respect to broadcasting and communication to the public, a Party may satisfy the obligation by applying Article 15(1) and Article 15(4) of the WPPT and may also apply Article 15(2) of the WPPT, provided that it is done in a manner consistent with that Party's obligations under Article 11.7.

<sup>19</sup> For greater certainty, the obligation under this paragraph does not include broadcasting or communication to the public, by wire or wireless means, of the sounds or representations of sounds fixed in a phonogram that are incorporated in a cinematographic or other audio-visual work.

<sup>20</sup> For the purposes of this paragraph, the Parties understand that a Party may provide for the retransmission of non-interactive, free over-the-air broadcasts, provided that these retransmissions are lawfully permitted by that Party's government communications authority; any entity engaging in these retransmissions complies with the

#### Article 11.42: Term of Protection for Copyright and Related Rights

Each Party shall provide that in cases in which the term of protection of a work, performance or phonogram is to be calculated:<sup>21</sup>

- (a) on the basis of the life of a natural person, the term shall be not less than the life of the author and at least 50 years after the author's death,<sup>22</sup> and
- (b) on a basis other than the life of a natural person, the term shall be:
  - (i) not less than 50 years from the end of the calendar year of the first authorised publication<sup>23</sup> of the work, performance or phonogram, or
  - (ii) for anonymous and pseudonymous works including performance or phonogram, at least 50 years as of the beginning of the calendar year subsequent to the year in which such works have been first published or created.

#### Article 11.43: Limitations and Exceptions

1. Each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

2. Paragraph 1 is without prejudice to limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WCT or the WPPT.

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relevant rules, orders or regulations of that authority, and these retransmissions do not include those delivered and accessed over the Internet. For greater certainty, this understanding does not limit a Party's ability to avail itself of this paragraph.

<sup>21</sup> For greater certainty, in implementing this Article, nothing prevents a Party from promoting certainty for the legitimate use and exploitation of a work, performance or phonogram during its term of protection, consistent with Article 11.43 and that Party's international obligations.

<sup>22</sup> The Parties understand that if a Party provides its nationals a term of copyright protection that exceeds life of the author plus 50 years, nothing in this Article or Article 11.7 shall preclude that Party from applying Article 7(8) of the Berne Convention with respect to the term in excess of the term provided in this subparagraph of protection for works of another Party.

<sup>23</sup> For greater certainty, for the purposes of paragraph (b), if a Party's law provides for the calculation of term from fixation rather than from the first authorised publication, that Party may continue to calculate the term from fixation.

#### Article 11.44: Balance in Copyright and Related Rights Systems

Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, among others, by means of limitations or exceptions that are consistent with Article 11.43, including those for the digital environment, giving due consideration to legitimate purposes such as criticism; comment; news reporting; teaching, scholarship, research, and other similar purposes; and facilitating access to published works for persons who are blind, visually impaired or otherwise print disabled.<sup>24, 25</sup>

#### Article 11.45: Contractual Transfers

Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right<sup>26</sup> in a work, performance or phonogram:

- (a) may freely and separately transfer that right by contract, and
- (b) by virtue of contract, including contracts of employment underlying the creation of works, performances or phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.<sup>27</sup>

#### Article 11.46: Obligations concerning 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 authors, performers, or producers of phonograms in connection with the exercise of their rights under this Section and that restrict acts, in respect of their works, performances, or phonograms, which are not authorised by the authors, the performers, or the producers of phonograms concerned or permitted by the laws and regulations of that Party.

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<sup>24</sup> As recognised by the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, done at Marrakesh, 27 June 2013 ("Marrakesh Treaty").

<sup>25</sup> For greater certainty, a use that has commercial aspects may in appropriate circumstances be considered to have a legitimate purpose under Article 11.43.

<sup>26</sup> For greater certainty, this provision does not affect the exercise of moral rights.

<sup>27</sup> Nothing in this Article affects a Party's ability to establish: (a) which specific contracts underlying the creation of works, performances or phonograms shall, in the absence of a written agreement, result in a transfer of economic rights by operation of law, and (b) reasonable limits to protect the interests of the original right holders, taking into account the legitimate interests of the transferees.

#### Article 11.47: Obligations concerning Rights Management Information

1. Each Party shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts, knowing or, with respect to civil remedies, having reasonable grounds to know, that it shall induce, enable, facilitate or conceal an infringement of any right or related right under this Section:

- (a) to remove or alter any electronic rights management information without authority, and
- (b) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.

2. For the purposes of this Article, “rights management information” means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.

#### Article 11.48: Collective Management

The Parties recognise the role of collective management societies for copyright and related rights in collecting and distributing royalties based on practices that are fair, efficient, transparent and accountable, which may include appropriate record keeping and reporting mechanisms.

### **Section I: Enforcement**

#### Article 11.49: General Obligation in Enforcement

Each Party shall ensure that enforcement procedures as specified in this Section are available under its law so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

#### Article 11.50: Border Measures

1. Each Party shall, in conformity with its laws and regulations and the provisions of Part III, Section 4 of the TRIPS Agreement adopt or maintain procedures to enable a right holder, who has valid grounds for suspecting that the importations of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with the competent authorities, in the Party in which the border measure procedures are applied, for the suspension by that Party's customs authorities of the release into free circulation of such goods.

2. A Party may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of Part III, Section 4 of the TRIPS Agreement are met. A Party may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from its territory in accordance with its laws and regulations.