

**CHAPTER 11**  
**INTELLECTUAL PROPERTY**

**SECTION A**  
**GENERAL PROVISIONS AND BASIC PRINCIPLES**

**Article 11.1: Objectives**

1. The objective of this Chapter is to reduce distortion and impediments to trade and investment by promoting deeper economic integration and cooperation through the effective and adequate creation, utilisation, protection, and enforcement of intellectual property rights, while recognising:
  - (a) the Parties' different levels of economic development and capacity, and differences in national legal systems;
  - (b) the need to promote innovation and creativity;
  - (c) the need to maintain an appropriate balance between the rights of intellectual property right holders and the legitimate interests of users and the public interest;
  - (d) the importance of facilitating the diffusion of information, knowledge, content, culture, and the arts; and
  - (e) that establishing and maintaining a transparent intellectual property system and promoting and maintaining adequate and effective protection and enforcement of intellectual property rights provide confidence to right holders and users.
  
2. The protection and enforcement of intellectual property rights should contribute to the promotion of 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 11.2: Scope of Intellectual Property**

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

## **Article 11.3: Relation to Other Agreements<sup>1</sup>**

In relation to intellectual property, in the event of any inconsistency between a provision of this Chapter and a provision of the TRIPS Agreement, the latter shall prevail to the extent of such inconsistency.

## **Article 11.4: Principles**

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 its socio-economic and technological development, provided that such measures are consistent with this Chapter.
2. Appropriate measures, provided that they are consistent with this Chapter, may be needed 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.<sup>2</sup>
3. Further to paragraph 2, the Parties recognise the need to foster competition.

## **Article 11.5: Obligations**

Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, implement in its law more extensive

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<sup>1</sup> For the purposes of the application of this Article, the Parties agree that the fact that this Chapter provides for more extensive protection of intellectual property than is required by the TRIPS Agreement does not mean there is an inconsistency within the meaning of this Article and paragraph 2 of Article 20.2 (Relation to Other Agreements).

<sup>2</sup> The Parties recognise that intellectual property rights by themselves do not necessarily confer market dominance.

protection than is required by this Chapter, provided that such protection does not contravene this Chapter. Each Party shall be free to determine the appropriate method of implementing this Chapter within its own legal system and practice.

### **Article 11.6: Exhaustion of Intellectual Property Rights**

Each Party shall be free to establish its own regime for exhaustion of intellectual property rights.

### **Article 11.7: National Treatment**

1. Each Party shall accord to the nationals<sup>3</sup> of other Parties treatment no less favourable than that it accords to its own nationals with regard to the protection<sup>4</sup> of intellectual property, subject to the exceptions provided in the TRIPS Agreement and in the multilateral agreements administered by the World Intellectual Property Organization (hereinafter referred to as “WIPO” in this Chapter), to which that Party is party.
2. A Party may avail itself of the exceptions referred to in paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of another Party to designate an address for service of process in its territory, or to appoint an agent in its territory, only where such exceptions are:

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<sup>3</sup> For the purposes of this paragraph, a “national” of a Party shall include, in respect of the relevant right, any person as defined in subparagraph (t) of Article 1.2 (General Definitions) of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 11.9 (Multilateral Agreements) and the TRIPS Agreement.

<sup>4</sup> For the purposes of this paragraph, “protection” includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter.

Further, for the purposes of this paragraph, “protection” also includes the provisions concerning:

- (a) effective technological measures set out in Article 11.14 (Circumvention of Effective Technological Measures); and
- (b) rights management information set out in Article 11.15 (Protection for Electronic Rights Management Information).

- (a) necessary to secure compliance with its laws and regulations that are not inconsistent with this Chapter; and
  - (b) not applied in a manner that would constitute a disguised restriction on trade.
- 3. The obligations under paragraph 1 do 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: The TRIPS Agreement and Public Health**

- 1. The Parties reaffirm the *Doha Declaration on the TRIPS Agreement and Public Health* adopted on 14 November 2001. In particular, the Parties have reached the following understandings regarding this Chapter:
  - (a) the Parties affirm the right to fully use the flexibilities as duly recognised in the *Doha Declaration on the TRIPS Agreement and Public Health*;
  - (b) the Parties agree that this Chapter does not and should not prevent a Party from taking measures to protect public health; and
  - (c) the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all.
- 2. In recognition of the Parties' commitment to access to medicines and public health, this Chapter does not and should not prevent the effective utilisation of Article 31*bis* of the TRIPS Agreement, and the Annex and Appendix to the Annex to the TRIPS Agreement.
- 3. The Parties recognise the importance of contributing to the international efforts to implement Article 31*bis* of the TRIPS Agreement, and the Annex and Appendix to the Annex to the TRIPS Agreement.

## Article 11.9: Multilateral Agreements

1. Each Party shall ratify or accede to the following multilateral agreements to which it is not yet party:
  - (a) the *Paris Convention for the Protection of Industrial Property* done at Paris on 20 March 1883, as revised at Stockholm on 14 July 1967 and amended on 28 September 1979 (hereinafter referred to as the “Paris Convention” in this Chapter);
  - (b) the *Berne Convention for the Protection of Literary and Artistic Works* done at Berne on 9 September 1886, as revised at Paris on 24 July 1971 and amended on 28 September 1979 (hereinafter referred to as the “Berne Convention” in this Chapter);
  - (c) the *Patent Cooperation Treaty* done at Washington on 19 June 1970, as amended on 28 September 1979 and modified on 3 February 1984 and 3 October 2001 (hereinafter referred to as the “PCT” in this Chapter);
  - (d) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* adopted at Madrid on 27 June 1989, as amended on 3 October 2006 and 12 November 2007 (hereinafter referred to as the “Madrid Protocol” in this Chapter);
  - (e) the *WIPO Copyright Treaty* adopted in Geneva on 20 December 1996 (hereinafter referred to as the “WCT” in this Chapter);
  - (f) the *WIPO Performances and Phonograms Treaty* adopted in Geneva on 20 December 1996 (hereinafter referred to as the “WPPT” in this Chapter); and
  - (g) the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled* adopted in Marrakesh on 27 June 2013 (hereinafter referred to as the “Marrakesh Treaty” in this Chapter).
2. Each Party shall endeavour to ratify or accede to the following multilateral agreement to which it is not yet party: the *Budapest Treaty on the International Recognition of the Deposit of Micro-*

*organisms for the Purposes of Patent Procedure* done at Budapest on 28 April 1977, as amended on 26 September 1980.

3. If any Party intends to ratify or accede to any of the following multilateral agreements, it may seek to cooperate with other Parties to support its ratification or accession to and its implementation of that multilateral agreement:
  - (a) the *1991 Act of International Convention for the Protection of New Varieties of Plants* as revised at Geneva on 19 March 1991;
  - (b) the *Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs* done at Geneva on 2 July 1999;
  - (c) the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* done at Rome on 26 October 1961 (hereinafter referred to as the “Rome Convention” in this Chapter); and
  - (d) the *Singapore Treaty on the Law of Trademarks* done at Singapore on 27 March 2006.

## **SECTION B COPYRIGHT AND RELATED RIGHTS**

### **Article 11.10: Exclusive Rights of Authors, Performers, and Producers of Phonograms**

1. Each Party shall provide to authors of works the exclusive right to authorise any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.
2. Each Party shall provide to performers and producers of phonograms<sup>5</sup> the exclusive right to authorise the making available

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<sup>5</sup> For the purposes of this Chapter, a Party may interpret “producers of phonograms” as having the same meaning as “authors of sound recordings”.

to the public of their performances fixed in phonograms and phonograms, respectively, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

3. Each Party shall provide to authors, performers, and producers of phonograms the exclusive right to authorise or prohibit the reproduction of their works, performances fixed in phonograms, and phonograms in any manner or form.

### **Article 11.11: Right to Remuneration for Broadcasting<sup>6</sup>**

Performers and producers of phonograms shall enjoy the right to a single equitable remuneration, or alternatively the right to receive royalties, for the direct or indirect use of phonograms published for commercial purposes for broadcasting.

### **Article 11.12: Protection of Broadcasting Organisations and Encrypted Programme-Carrying Satellite Signals**

1. Each Party shall provide to broadcasting organisations the exclusive right to prohibit the re-broadcasting of their broadcasts by at least wireless means, the fixation of their broadcasts, and the reproduction of fixations of their broadcasts.<sup>7, 8</sup>
2. Each Party shall endeavour to provide measures, in accordance with its laws and regulations, against at least one of the following acts:
  - (a) wilful reception<sup>9</sup>;

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<sup>6</sup> Where a Party is, or becomes, party to the WPPT, that Party's obligations under this Article shall be subject to any commitments and reservations that that Party has made, or will make, under the WPPT.

<sup>7</sup> Where a Party does not grant such rights to broadcasting organisations, it shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention.

<sup>8</sup> Any Party may, in relation to the rights conferred under this paragraph, provide for conditions, limitations, exceptions, and reservations, to the extent permitted by the Rome Convention.

<sup>9</sup> For greater certainty and for the purposes of subparagraphs 2(a) and (c), a Party may provide that wilful reception of an encrypted programme-carrying satellite signal means reception and use of the signal, or reception and decoding of the signal.

- (b) wilful distribution<sup>10</sup>; or
- (c) wilful reception and further distribution<sup>11</sup>,

of 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.

### **Article 11.13: Collective Management Organisations**

1. Each Party shall endeavour to foster the establishment of appropriate organisations for the collective management of copyright and related rights. Each Party shall encourage such organisations to operate in a manner that is fair, efficient, publicly transparent, and accountable to their members, which may include open and transparent record keeping of the collection and distribution of royalties<sup>12</sup>.
2. The Parties recognise the importance of fostering cooperation between their respective collective management organisations for the purposes of mutually ensuring easier licensing of content among the Parties, as well as encouraging<sup>13</sup> mutual transfer of royalties for use of works or other copyright-protected subject matters of the nationals of another Party.

### **Article 11.14: Circumvention of Effective Technological 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 referred to in this Section and

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<sup>10</sup> For greater certainty, a Party may interpret “distribution” as “retransmission to the public”.

<sup>11</sup> For greater certainty, a Party may interpret “distribution” as “retransmission to the public”.

<sup>12</sup> For greater certainty, “royalties” may include equitable remuneration.

<sup>13</sup> For greater certainty, “encouraging” does not require a Party to intercede in any contractual arrangements between collective management organisations.



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.

#### **Article 11.15: Protection for Electronic Rights Management Information**

To protect electronic rights management information (hereinafter referred to as “RMI” in this Chapter)<sup>14</sup>, each Party shall provide adequate and effective legal remedies against any person knowingly performing without authority any of the following acts knowing, or with respect to civil remedies with reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related rights referred to in this Chapter:

- (a) removing or altering any electronic RMI; or
- (b) distributing, importing for distribution, broadcasting, communicating, or making available to the public copies of works, performances fixed in phonograms, or phonograms, knowing that electronic RMI has been removed or altered without authority.

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<sup>14</sup> For the purposes of this Article, “RMI” means:

- (a) information that identifies the work, the performance, the phonogram, the author of the work, the performer of the performance, the producer of the phonogram, or the owner of any right in the work, performance, or phonogram;
- (b) information about the terms and conditions of use of the work, performance, or phonogram; or
- (c) any numbers or codes that represent the information described in subparagraphs (a) and (b) of this footnote,

when any of these items of information is attached to a copy of a work, performances fixed in phonograms, or a phonogram, or appears in connection with the communication or the making available of a work, performances fixed in phonograms, or a phonogram to the public.

### **Article 11.16: Limitations and Exceptions to Providing Protection and Remedies for Technological Measures and RMI**

1. Each Party may provide for appropriate limitations and exceptions to measures implementing Article 11.14 (Circumvention of Effective Technological Measures) and Article 11.15 (Protection for Electronic Rights Management Information) in accordance with its laws and regulations.
2. The obligations set forth in Article 11.14 (Circumvention of Effective Technological Measures) and Article 11.15 (Protection for Electronic Rights Management Information) are without prejudice to the rights, limitations, exceptions, or defences to infringement of any copyright or related right under a Party's laws and regulations.

### **Article 11.17: Government Use of Software**

Each Party confirms its commitment to:

- (a) maintain appropriate laws, regulations, or policies that provide for its central government to use only non-infringing computer software in a manner consistent with this Chapter; and
- (b) encourage its regional and local governments to adopt or maintain measures similar to those referred to in subparagraph (a).

### **Article 11.18: Limitations and Exceptions**

1. Each Party shall confine limitations or exceptions to exclusive rights to certain special cases which 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.<sup>15</sup>
2. Nothing in paragraph 1 shall reduce or extend the scope of applicability of the limitations and exceptions available to a Party

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<sup>15</sup> For greater certainty, this paragraph shall not prevent a Party from providing limitations or exceptions for broadcasts in accordance with multilateral agreements related to intellectual property to which that Party is, or becomes, party.

as a party to the TRIPS Agreement, the Berne Convention, the Rome Convention, the WCT, or the WPPT.

3. Each Party shall endeavour to provide an appropriate balance in its copyright and related rights system, among other things by means of limitations and exceptions consistent with paragraph 1, for legitimate purposes, which may include education, research, criticism, comment, news reporting, and facilitating access to published works for persons who are blind, visually impaired, or otherwise print disabled.
4. For greater certainty, a Party may adopt or maintain limitations or exceptions to the rights referred to in paragraph 1 for fair use, as long as any such limitation or exception is confined as stated in paragraph 1.

## **SECTION C TRADEMARKS**

### **Article 11.19: Trademarks Protection**

Each Party shall ensure that any signs or any combination of signs capable of distinguishing the goods and services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements, three-dimensional shapes, and combinations of colours, as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, a Party may make registrability depend on distinctiveness acquired through use. No Party shall require, as a condition of registration of a trademark, that signs be visually perceptible, nor deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound.<sup>16</sup>

### **Article 11.20: Protection of Collective Marks and Certification Marks**

1. Each Party shall provide that trademarks include collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in its laws and regulations, provided that those marks are protected.

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<sup>16</sup> A Party may require an adequate description, which can be represented graphically, of the trademark.

2. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system in accordance with its laws and regulations.

#### **Article 11.21: Trademarks Classification System**

1. 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 on 15 June 1957, as amended from time to time (hereinafter referred to as the “Nice Agreement” in this Chapter).
2. A Party that relies on translations of the classification system established by the Nice Agreement (hereinafter referred to as the “Nice Classification” in this Chapter) shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published.

#### **Article 11.22: Registration and Applications of Trademarks**

1. Each Party shall provide a system for the registration of trademarks, which shall include:
  - (a) a requirement to provide to the applicant a communication in writing, which may be provided electronically, of the reasons for a refusal to register a trademark;
  - (b) an opportunity for the applicant to respond to communications from the Party’s competent authorities, to contest an initial refusal, and to make a judicial appeal of a final refusal to register a trademark;
  - (c) an opportunity to do at least one of the following in relation to a trademark before it has been registered:
    - (i) oppose a trademark application; or
    - (ii) provide the competent authority with information that the trademark application does not satisfy the requirements for registration;

- (d) an opportunity to do at least one of the following in relation to a trademark after it has been registered:
    - (i) oppose the registration;
    - (ii) seek revocation of the registration;
    - (iii) seek cancellation of the registration; or
    - (iv) seek invalidation of the registration; and
  - (e) a requirement that administrative decisions<sup>17</sup> in opposition, revocation, cancellation, or invalidation proceedings shall be reasoned and in writing. Such decisions may be provided electronically.
2. Each Party shall provide:
- (a) a system for the electronic application for processing, registering, and maintenance of, trademarks; and
  - (b) a publicly accessible online electronic database of trademark applications and registrations.

### **Article 11.23: Rights Conferred**

Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services that are identical or similar to those goods or services in respect of which the 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. The rights described in this Article shall not prejudice any existing prior rights, nor shall they affect the possibility of a Party making rights available on the basis of use.

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<sup>17</sup> For the purposes of this subparagraph, "administrative decisions" include quasi-judicial decisions.

#### **Article 11.24: Exceptions**

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

#### **Article 11.25: Protection of Trademarks that Predate Geographical Indications**

Each Party shall protect trademarks where they predate, in its jurisdiction, geographical indications, in accordance with the TRIPS Agreement.

#### **Article 11.26: Protection of Well-Known Trademarks**

1. Each Party shall provide for appropriate measures to refuse or cancel the registration, and to prohibit the use,<sup>18</sup> of a trademark that is identical or similar to a well-known trademark<sup>19, 20</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.
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 Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO, 20 to 29 September 1999.
3. No Party shall require, as a condition for determining that a trademark is a well-known trademark, that the trademark has

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<sup>18</sup> For greater certainty, a Party may comply with the obligation to provide for appropriate measures to prohibit the use of the trademark that is identical or similar to a well-known trademark under this paragraph by providing its judicial authorities with the authority to prohibit the use of such a trademark.

<sup>19</sup> For the purposes of this paragraph, a Party may treat “a reproduction, an imitation, or a translation of a well-known trademark” as “identical or similar to a well-known trademark”.

<sup>20</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.

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.

#### **Article 11.27: Bad Faith Trademarks<sup>21</sup>**

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

#### **Article 11.28: One and the Same Application Relating to Several Goods or Services**

Each Party shall provide that one and the same application for registration of a trademark may relate to several goods or services, or any combination thereof, irrespective of whether they belong to one class or to several classes of the Nice Classification.

### **SECTION D GEOGRAPHICAL INDICATIONS**

#### **Article 11.29: Protection of Geographical Indications**

Each Party shall ensure in its laws and regulations adequate and effective means to protect geographical indications. Each Party recognises that such protection may be provided through a trademark system, a *sui generis* system, or other legal means, provided that all requirements under the TRIPS Agreement are fulfilled.

#### **Article 11.30: Domestic Administrative Procedures for the Protection of Geographical Indications**

1. If a Party provides domestic administrative procedures<sup>22</sup> for the protection of geographical indications, whether through a

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<sup>21</sup> For the purposes of this Article, the competent authority of a Party may take into consideration whether the trademark is identical or similar to a well-known trademark of another person.

<sup>22</sup> For the purposes of this Article, “administrative procedures” include quasi-judicial procedures.

trademark or a *sui generis* system, that Party shall with respect to applications for that protection:

- (a) receive those applications for the protection of geographical indications without requiring intercession by a Party on behalf of its nationals;<sup>23</sup>
  - (b) process those applications in compliance with reasonable procedures and formalities<sup>24</sup>;
  - (c) ensure that its laws and regulations governing the protection of geographical indications are readily available to the public and clearly set out the procedures relating to the protection of geographical indications including procedures relating to the filing of applications;
  - (d) make available information to allow the public to obtain guidance concerning the procedures for filing applications for the protection of geographical indications, and allow an applicant or their representative to ascertain the status of specific applications; and
  - (e) ensure that such applications are published for opposition and provide procedures for opposing geographical indications that are the subject of applications. Oppositions shall be received without requiring intercession by a Party on behalf of its nationals.
2. With respect to the protection of a geographical indication referred to in paragraph 1, a Party shall provide procedures for cancellation<sup>25</sup> of the protection afforded to a geographical indication.

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<sup>23</sup> For greater certainty, a Party may require that an application for protection of a geographical indication originating in another Party include evidence indicating to the satisfaction of the former Party that the geographical indication is protected in that other Party.

<sup>24</sup> The Parties understand that for the purposes of this subparagraph, reasonable procedures and formalities may be considered to be not overly burdensome procedures and formalities.

<sup>25</sup> For greater certainty, for the purposes of this Section, cancellation may be implemented through nullification or revocation proceedings.



### **Article 11.31: Grounds for Opposition and Cancellation**

1. With respect to the opposition procedures referred to in subparagraph 1(e) of Article 11.30 (Domestic Administrative Procedures for the Protection of Geographical Indications), each Party shall provide procedures that allow at least interested persons to oppose the protection of a geographical indication, and that allow for any such protection to be refused at least on the ground that the geographical indication is a term customary in common language as the common name<sup>26</sup> for the relevant good in the territory of that Party.
2. If a Party provides protection of a geographical indication through the procedures referred to in Article 11.30 (Domestic Administrative Procedures for the Protection of Geographical Indications) to the translation or transliteration of that geographical indication, that Party shall make available at least the ground which is the same as that referred to in paragraph 1 with respect to oppositions to the protection of that translation or transliteration.<sup>27</sup>
3. With respect to the procedures referred to in paragraph 1, in determining whether a term is a term customary in common language as the common name for the relevant good in the territory of a Party, each Party shall ensure that its competent authorities have the authority to take into account how consumers understand the term within the territory of that Party. Factors relevant to such consumer understanding may include:
  - (a) whether the term is used to refer to the type of good in question, as indicated by competent sources such as dictionaries, newspapers, and relevant websites; and
  - (b) how the good referenced by the term is marketed and used in trade in the territory of that Party.<sup>28</sup>

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<sup>26</sup> Where a Party applies this Article to geographical indications for wines and spirits or applications for those geographical indications, the Parties understand that nothing in this Section shall require a Party to protect a geographical indication of any other Party with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety that exists in the territory of that Party.

<sup>27</sup> A Party shall not be required to apply this paragraph to applications for geographical indications for wines and spirits.

<sup>28</sup> For the purposes of this subparagraph, a Party's authorities may take into account, as appropriate, whether the term is used in relevant international standards recognised by the Parties to refer to a type or class of good in the territory of that Party.

4. With respect to the cancellation procedure referred to in paragraph 2 of Article 11.30 (Domestic Administrative Procedures for the Protection of Geographical Indications), no Party shall preclude the possibility that the protection of a geographical indication may be cancelled, or otherwise cease, on the basis that the protected term has ceased meeting the conditions upon which the protection was originally granted in that Party.

#### **Article 11.32: Multi-Component Terms**

With respect to the procedures referred to in Article 11.30 (Domestic Administrative Procedures for the Protection of Geographical Indications) and Article 11.31 (Grounds for Opposition and Cancellation), an individual component of a multi-component term that is protected as a geographical indication shall not be protected in a Party if that individual component is a term customary in the common language as the common name for the associated good in the territory of that Party.

#### **Article 11.33: Date of Protection of a Geographical Indication**

The protection of a geographical indication through a Party's domestic administrative procedures<sup>29</sup> referred to in Article 11.30 (Domestic Administrative Procedures for the Protection of Geographical Indications) shall commence no earlier than the filing date<sup>30</sup> of the application for the protection in that Party or the registration date in that Party, as applicable.

#### **Article 11.34: Protection or Recognition of Geographical Indications Pursuant to International Agreements**

If a Party protects or recognises a geographical indication pursuant to an international agreement involving a Party or a non-Party, and that agreement is concluded after the date of entry into force of this Agreement for that Party, and that geographical indication is not

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<sup>29</sup> For the purposes of this Article, "administrative procedures" include quasi-judicial procedures.

<sup>30</sup> For greater certainty, where a Party protects a geographical indication through its trademark system, the filing date referred to in this Article includes, as applicable, the priority filing date under the Paris Convention.

protected through the procedures referred to in Article 11.30 (Domestic Administrative Procedures for the Protection of Geographical Indications), that Party shall:

- (a) make available to the public information concerning the procedures for protection or recognition of geographical indications, and if applicable, allow at least interested persons to ascertain the status of requests for protection or recognition;
- (b) ensure that those geographical indications that are being considered for protection or recognition are published for opposition, provide procedures for at least interested persons to oppose those geographical indications on the ground referred to in paragraph 1 of Article 11.31 (Grounds for Opposition and Cancellation), and apply Article 11.32 (Multi-Component Terms) with respect to those procedures; and
- (c) make available to the public details regarding the terms that the Party is considering protecting or recognising through an international agreement involving a Party or a non-Party.

**Article 11.35: Protection or Recognition of Geographical Indications under Concluded International Agreements**

1. No Party shall be required to apply Article 11.34 (Protection or Recognition of Geographical Indications Pursuant to International Agreements) to geographical indications that have been specifically identified in, and that are protected or recognised pursuant to, an international agreement involving a Party or a non-Party, provided that the agreement was concluded prior to the date of entry into force of this Agreement for that Party.
2. In respect of international agreements referred to in paragraph 1 that permit the protection or recognition of a new geographical indication, a Party shall:<sup>31</sup>

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<sup>31</sup> A Party may comply with this paragraph by complying with the obligations under Article 11.30 (Domestic Administrative Procedures for the Protection of Geographical Indications) and Article 11.31 (Grounds for Opposition and Cancellation).

- (a) apply subparagraph (c) of Article 11.34 (Protection or Recognition of Geographical Indications Pursuant to International Agreements); and
- (b) ensure an opportunity for at least interested persons to comment regarding the protection or recognition of the new geographical indication for a reasonable period of time before such a term is protected or recognised.

## **SECTION E PATENTS**

### **Article 11.36: Patentable Subject Matter**

1. Subject to paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step, and are capable of industrial application<sup>32</sup>. Subject to paragraph 3 and Section M (Transition Periods and Technical Assistance), patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology, and whether products are imported or locally produced.
2. A Party may exclude from patentability inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health, or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its laws and regulations.
3. A Party may also exclude from patentability:
  - (a) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; and
  - (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, each Party shall provide for the

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<sup>32</sup> For the purposes of this Section, "inventive step" and "capable of industrial application" may be deemed by a Party to be synonymous with "non-obvious" and "useful", respectively.

protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The Parties shall review this subparagraph upon any amendment to subparagraph 3(b) of Article 27 of the TRIPS Agreement with a view to deciding whether to adopt a similar amendment to this subparagraph.

#### **Article 11.37: Rights Conferred**

1. Each Party shall provide that a patent shall confer on its owner the following exclusive rights:
  - (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing<sup>33</sup> for these purposes that product; and
  - (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.
2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

#### **Article 11.38: Exceptions to Rights Conferred**

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 patent owner, taking account of the legitimate interests of third parties.

#### **Article 11.39: Other Use without Authorisation of the Right Holder**

For greater certainty, nothing in this Agreement shall limit a Party's rights and obligations under Article 31 and Article 31*bis* of the TRIPS

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<sup>33</sup> This right, like all other rights conferred under this Chapter in respect of the use, sale, importation, or other distribution of goods, is subject to Article 11.6 (Exhaustion of Intellectual Property Rights).

Agreement, and the Annex and Appendix to the Annex to the TRIPS Agreement.

#### **Article 11.40: Experimental Use of a Patent**

Without limiting Article 11.38 (Exceptions to Rights Conferred), each Party shall provide that any person may do an act that would otherwise infringe a patent if the act is done for experimental purposes<sup>34</sup> relating to the subject matter of a patented invention.

#### **Article 11.41: Procedural Aspects of Examination and Registration**

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent systems as well as simplifying and streamlining the procedures and processes of their respective competent authorities for the benefit of all users of their respective patent systems and the public as a whole.
2. Each Party shall provide a patent system, which includes:
  - (a) a requirement to provide to the applicant a communication in writing of the reasons for a refusal to grant a patent;
  - (b) an opportunity for the applicant to make amendments and observations in connection with their applications;<sup>35</sup>
  - (c) an opportunity to do at least one of the following in relation to a patent before it has been granted:
    - (i) file an opposition against the patent application; or
    - (ii) provide the competent authority with information that could deny novelty or inventive step of an invention claimed in the patent application;

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<sup>34</sup> For greater certainty, each Party may determine, consistent with Article 11.38 (Exceptions to Rights Conferred), what acts fall within the meaning of “experimental purposes”.

<sup>35</sup> For the purposes of this subparagraph, the Parties understand that “amendments” may include corrections and “observations” may include explanations or responses to a finding on its application by the competent authority whether or not such response is given in conjunction with an amendment or correction to the application.

- (d) an opportunity to do at least one of the following in relation to a patent after it has been granted:
  - (i) oppose the grant;
  - (ii) seek revocation;
  - (iii) seek cancellation; or
  - (iv) seek invalidation; and
- (e) a requirement that administrative decisions<sup>36</sup> in opposition, revocation, cancellation, or invalidation proceedings shall be reasoned and in writing. Such decisions may be provided electronically.

#### **Article 11.42: Grace Period for Patents**

The Parties recognise the benefits of patent grace periods to disregard certain public disclosures of inventions when determining if an invention is novel in order to support innovation.

#### **Article 11.43: Electronic Patent Application System**

Each Party is encouraged to adopt an electronic patent application system so as to facilitate ease of application by patent applicants.

#### **Article 11.44: 18-Month Publication**

1. Each Party shall publish any patent application promptly after the expiry of 18 months from its filing date or, if priority is claimed, from its earliest priority date, unless the application has been published earlier, or has been withdrawn, abandoned, or refused<sup>37</sup>.

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<sup>36</sup> For the purposes of this subparagraph, “administrative decisions” may include quasi-judicial decisions.

<sup>37</sup> The Parties understand that, for the purposes of this Article, an application is withdrawn, abandoned, or refused in accordance with the respective Party’s laws and regulations.

2. If a pending application is not published promptly in accordance with paragraph 1, the Party shall publish that application or the corresponding patent as soon as practicable.
3. Nothing in this Article shall be construed to require a Party to publish any information the disclosure of which it considers to be contrary to its national security or to public order or morality.
4. Each Party shall provide that the applicant may request the early publication of an application prior to the expiry of the period referred to in paragraph 1.

#### **Article 11.45: Information as Prior Art Made Available to the Public on the Internet**

The Parties recognise that information made available to the public on the internet may form part of the prior art.

#### **Article 11.46: Expedited Examination**

Each Party shall endeavour to provide for domestic procedures for a patent applicant to request to expedite the examination of its patent application in accordance with that Party's laws, regulations, and rules.

#### **Article 11.47: Introduction of International Patent Classification System**

Each Party shall endeavour to use a patent classification system that is consistent with the *Strasbourg Agreement Concerning the International Patent Classification* done at Strasbourg on 24 March 1971, as amended from time to time.

#### **Article 11.48: Protection of New Varieties of Plants<sup>38</sup>**

Each Party shall provide for the protection of new varieties of plants through an effective *sui generis* plant variety protection system.

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<sup>38</sup> For greater certainty, with respect to the protection of plant varieties, subparagraph 3(b) of Article 11.36 (Patentable Subject Matter) is subject to this Article.



## **SECTION F INDUSTRIAL DESIGNS**

### **Article 11.49: Protection of Industrial Designs**

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. A Party may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. A Party may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.
2. Each Party shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination, or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Each Party shall be free to meet this obligation through industrial design law or through copyright law.
3. Each Party shall provide that the owner of a protected industrial design has the right to prevent third parties not having the owner's consent from making, selling, or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.
4. Each Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.
5. Each Party confirms that protection for industrial designs is available for designs:
  - (a) embodied in a part of an article; or, alternatively,
  - (b) having a particular regard, where appropriate, to a part of an article in the context of the article as a whole, in accordance with its laws and regulations.

**Article 11.50: Information as Prior Art for Designs Made Available to the Public on the Internet<sup>39</sup>**

The Parties recognise that information made available to the public on the internet may form part of the prior art for designs.

**Article 11.51: Registration or Grant and Applications of Industrial Designs**

Each Party shall provide a system for the registration or grant of industrial designs, which shall include:

- (a) a requirement to provide to the applicant a communication in writing, which may be provided electronically, of the reasons for a refusal to register or grant an industrial design;
- (b) an opportunity for the applicant to respond to communications from the Party's competent authorities for industrial designs, and to contest, challenge, or appeal a refusal to register or grant an industrial design;
- (c) an opportunity to seek cancellation or invalidation or revocation of a registration or grant; and
- (d) a requirement that administrative decisions<sup>40</sup> in cancellation or invalidation or revocation proceedings shall be reasoned and in writing. Such decisions may be provided electronically.

**Article 11.52: Introduction of International Classification System for Industrial Designs**

Each Party shall endeavour to use a classification system for industrial designs that is consistent with the *Locarno Agreement Establishing an International Classification for Industrial Designs* signed at Locarno on 8 October 1968, as amended from time to time.

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<sup>39</sup> For greater certainty, nothing in this Article shall require a Party to ensure that its administrative authorities conduct substantive examination of designs.

<sup>40</sup> For the purposes of this subparagraph, "administrative decisions" may include quasi-judicial decisions.

**SECTION G**  
**GENETIC RESOURCES, TRADITIONAL KNOWLEDGE, AND**  
**FOLKLORE<sup>41</sup>**

**Article 11.53: Genetic Resources, Traditional Knowledge, and Folklore**

1. Subject to its international obligations, each Party may establish appropriate measures<sup>42</sup> to protect genetic resources, traditional knowledge, and folklore.
2. Where a Party has disclosure requirements relating to the source or origin of genetic resources<sup>43</sup> as part of its patent system, that Party shall endeavour to make available its laws, regulations, and procedures with respect to such requirements, including on the internet where feasible, in such a manner as to enable interested persons and other Parties to become acquainted with them.
3. Each Party shall endeavour to pursue quality patent examination, which may include:
  - (a) that when determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;
  - (b) an opportunity for third parties to cite, in writing, to the competent examining authority, prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources; and

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<sup>41</sup> For greater certainty, this Section is without prejudice to the position of any Party on genetic resources, traditional knowledge, and folklore, including in any bilateral or multilateral negotiations through any fora, such as the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

<sup>42</sup> For greater certainty, the Parties understand that such “appropriate measures” are a matter for each Party to determine and may not necessarily involve its intellectual property system.

<sup>43</sup> The Parties recognise the fact that some Parties also require, if applicable, in their patent systems, evidence of prior informed consent and access and benefit sharing for genetic resources and associated traditional knowledge.

- (c) if applicable and appropriate, the use of databases or digital libraries which contain relevant information on traditional knowledge associated with genetic resources.

## **SECTION H UNFAIR COMPETITION**

### **Article 11.54: Effective Protection against Unfair Competition**

Each Party shall provide for effective protection against acts of unfair competition in accordance with the Paris Convention<sup>44</sup>.

### **Article 11.55: Domain Names**

In connection with its system for the management of its country code top-level domain (ccTLD) domain names and in accordance with its laws and regulations and, if applicable, relevant administrator policies regarding protection of privacy and personal data, each Party shall make the following 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, or that:
  - (i) is designed to resolve disputes expeditiously and at a reasonable cost;
  - (ii) is fair and equitable;
  - (iii) is not overly burdensome; and
  - (iv) does not preclude resort to judicial proceedings; and

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<sup>44</sup> For greater certainty, the Parties understand that Article 10*bis* of the Paris Convention covers acts of unfair competition in relation to the supply of goods and services, where relevant.

- (b) appropriate remedies<sup>45</sup>, 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.

#### **Article 11.56: Protection of Undisclosed Information**

1. Each Party shall provide protection of undisclosed information in accordance with paragraph 2 of Article 39 of the TRIPS Agreement.
2. Further to paragraph 1, the Parties recognise the importance of protecting undisclosed information in relation to the objectives specified in paragraph 2 of Article 11.1 (Objectives).

### **SECTION I COUNTRY NAMES**

#### **Article 11.57: 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 J ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

#### **SUBSECTION 1 GENERAL OBLIGATIONS**

#### **Article 11.58: General Obligations**

1. Each Party shall ensure that enforcement procedures as specified in this Section are available under its laws and regulations 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 which constitute a deterrent to further infringements. These

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<sup>45</sup> The Parties understand that such remedies may, but need not, include, among other things, revocation, cancellation, transfer, damages, or injunctive relief.

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.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
3. In implementing this Section, each Party shall take into account the need for proportionality between the seriousness of the infringement of the intellectual property right and the applicable remedies and penalties, as well as, if applicable, the interests of third parties.
4. The Parties understand that this Section does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of each Party to enforce its law in general. Nothing in this Section shall create any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.
5. In civil proceedings involving copyright of authors, each Party shall provide for a presumption<sup>46</sup> that, in the absence of proof to the contrary, the person whose name is indicated in the usual manner as the author of the work is the author of the work. The obligation contained in the preceding sentence shall apply to criminal and administrative proceedings if applicable in a Party's laws and regulations.

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<sup>46</sup> For greater certainty, a Party may implement this paragraph on the basis of sworn statements or documents having evidentiary value, such as statutory declarations. A Party may also provide that these presumptions are rebuttable presumptions that may be rebutted by evidence to the contrary.

## **SUBSECTION 2 CIVIL REMEDIES<sup>47</sup>**

### **Article 11.59: Fair and Equitable Procedures**

1. Each Party shall make available to right holders<sup>48</sup> civil judicial procedures concerning the enforcement of any intellectual property right covered by this Chapter. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. All parties to the procedures shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedures shall provide a means to identify and protect confidential information, unless this would be contrary to the Party's constitutional requirements.
2. Each Party may permit the use of alternative dispute resolution procedures to resolve civil disputes concerning intellectual property rights.

### **Article 11.60: Damages**

1. Each Party shall provide<sup>49</sup> that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that right holder's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

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<sup>47</sup> A Party may comply with the obligations under this Subsection to provide civil judicial procedures concerning the enforcement of geographical indications in accordance with footnote 4 of Article 23 of the TRIPS Agreement.

<sup>48</sup> For the purposes of this Article, "right holder" includes federations and associations that have legal standing to assert such rights.

<sup>49</sup> A Party may also provide that the right holder may not be entitled to any of the remedies set out in paragraphs 1 and 3 if there is a finding of non-use of a trademark. For greater certainty, there is no obligation for a Party to provide for the possibility of any of the remedies in paragraphs 1 and 3 to be ordered in parallel.

2. In determining the amount of damages referred to in paragraph 1, a Party's judicial authorities shall have the authority to consider, among other things, any legitimate measure of value the right holder submits.<sup>50</sup>
3. In cases of infringement of copyright or related rights and trademark counterfeiting, the judicial authorities shall have the authority to order the infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity to pay the right holder the infringer's profits that are attributable to the infringement.<sup>51</sup>

#### **Article 11.61: Court Costs and Fees**

Each Party shall provide that its judicial authorities, where appropriate, have the authority to order<sup>52</sup>, at the conclusion of civil judicial proceedings concerning the infringement of at least copyright or related rights and trademarks, that the prevailing party is awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under that Party's law.

#### **Article 11.62: Destroying Infringing Goods and Materials and Implements**

1. Each Party shall provide that in civil judicial procedures its judicial authorities have the authority at least at the right holder's request, to order that pirated copyright goods and counterfeit trademark goods be destroyed, except in exceptional circumstances, without compensation of any sort.<sup>53</sup>

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<sup>50</sup> For greater certainty, a Party's judicial authorities may have the authority to consider the value of the infringed goods or services measured by their market price, in determining the amount of damages, where appropriate.

<sup>51</sup> A Party may comply with this paragraph through presuming those profits to be the damages referred to in paragraph 1.

<sup>52</sup> The judicial authorities of a Party may have the authority to make such orders through separate proceedings after the conclusion of the civil judicial proceedings.

<sup>53</sup> For greater certainty, the Parties understand that while judicial authorities have the authority to order the destruction of the goods, they may also have the authority to order, without compensation of any sort, the disposal of such goods outside the channels of commerce in such a manner as to avoid any harm caused to right holders, instead of destruction.



2. Each Party shall further provide that in civil judicial procedures its judicial authorities have the authority to order that materials and implements, the predominant use of which has been in the creation of such infringing goods, be, without compensation of any sort, disposed<sup>54</sup> of outside the channels of commerce in such a manner as to minimise the risks of further infringements.
3. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of goods into the channels of commerce.

#### **Article 11.63: Confidential Information in Civil Judicial Proceedings**

Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to impose penalties on parties to the proceeding, their counsel, experts, or other persons subject to the court's jurisdiction, for violation of judicial orders<sup>55</sup> regarding the protection of confidential information produced or exchanged in that proceeding.

#### **Article 11.64: Provisional Measures**

1. In civil judicial proceedings concerning trademark counterfeiting, each Party shall provide that its judicial authorities have the authority to adopt provisional measures to order the seizure, or other taking into custody, of suspected infringing goods and both of the following:
  - (a) materials and implements predominantly used in the act of alleged infringement; and
  - (b) documentary evidence relevant to the alleged infringement.

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<sup>54</sup> For greater certainty, the Parties understand that while judicial authorities have the authority to order the disposal of the materials and implements, they may also have the authority to order, without compensation of any sort, the destruction of such materials and implements instead of disposal.

<sup>55</sup> For greater certainty, for the purposes of this Article, the Parties understand that a Party's law may use an alternative term to "judicial orders" such as "court orders".

2. In civil judicial proceedings concerning the infringement of copyright or related rights, each Party shall provide that its judicial authorities have the authority to adopt provisional measures to order the seizure, or other taking into custody, of suspected infringing goods and at least one of the following:
  - (a) materials and implements predominantly used in the act of alleged infringement; or
  - (b) documentary evidence relevant to the alleged infringement.
3. Each Party shall provide that its judicial authorities have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.
4. Each Party shall provide that its judicial authorities have the authority to require an applicant, with respect to provisional measures, to provide any reasonably available evidence in order to satisfy the judicial authority with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to procedures for such provisional measures.
5. For greater certainty, the Parties understand that provisional measures shall be implemented in accordance with paragraphs 4 through 8 of Article 50 of the TRIPS Agreement.

### **SUBSECTION 3 BORDER MEASURES**

#### **Article 11.65: Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by Right Holder's Application**

1. Each Party shall adopt or maintain procedures<sup>56</sup> with respect to import shipments under which a right holder, who has valid grounds for suspecting that the importation of pirated copyright goods or counterfeit trademark goods may take place, may lodge an application with the Party's competent authorities to suspend the release of the suspected pirated copyright goods or counterfeit trademark goods<sup>57</sup> in accordance with Article 51 of the TRIPS Agreement.
2. For the purposes of this Subsection, "competent authorities" may include the appropriate judicial, administrative, or law enforcement authorities under a Party's laws and regulations.

#### **Article 11.66: Applications for Suspension or Detention**

Each Party shall endeavour to provide that an accepted application<sup>58</sup> for

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<sup>56</sup> The Parties understand that there shall be no obligation to apply such procedures to imports of goods put on the market in another Party or non-Party by or with the consent of the right holder, or to goods in transit.

<sup>57</sup> For the purposes of Subsection 1 (General Obligations), Subsection 2 (Civil Remedies), Subsection 3 (Border Measures), and Subsection 4 (Criminal Remedies):

- (a) "counterfeit trademark goods" means any goods, including packaging, bearing without authorisation a trademark that is identical to a trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the laws and regulations of the Party providing procedures under those Subsections; and
- (b) "pirated copyright goods" means any goods that are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Party providing procedures under those Subsections.

<sup>58</sup> For the purposes of this Subsection, a Party may treat "application" as meaning "recordation".

suspension or detention remains in force for an appropriate period with a view to minimising the administrative burden on right holders.

#### **Article 11.67: Security or Equivalent Assurance**

Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures referred to in Article 11.65 (Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by Right Holder's Application) to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that the security or equivalent assurance shall not unreasonably deter recourse to these procedures.

#### **Article 11.68: Information Provided by Competent Authorities to Right Holders**

Without prejudice to a Party's laws and regulations pertaining to the confidentiality of information, where its competent authorities have detained or suspended the release of goods that are suspected of being pirated copyright goods or counterfeit trademark goods, that Party may provide that its competent authorities have the authority to inform the right holder of the name and address of the consignor, importer, or consignee; a description of the goods; the quantity of the goods; and, if known, the country of origin of the goods.

#### **Article 11.69: Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by *Ex Officio* Action**

1. Each Party shall adopt or maintain procedures with respect to import shipments under which its competent authorities may act upon their own initiative to suspend the release of suspected<sup>59</sup> pirated copyright goods or counterfeit trademark goods. Each Party shall provide that where its competent authorities act upon their own initiative, the importer and the right holder shall be promptly notified of the suspension.

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<sup>59</sup> A Party may comply with this obligation on the basis that its competent authorities have reasonable cause to believe that the goods are pirated copyright goods or counterfeit trademark goods.

2. A Party may adopt or maintain procedures with respect to export shipments under which its competent authorities may act upon their own initiative to suspend the release of suspected pirated copyright goods or counterfeit trademark goods. That Party shall provide that where its competent authorities act upon their own initiative, the exporter and the right holder shall be promptly notified of the suspension.
3. Each Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

**Article 11.70: Information Provided by Right Holders to Competent Authorities in Case of *Ex Officio* Action**

Each Party shall provide that its competent authorities shall have the authority, where they act on their own initiative, to request a right holder to supply relevant information to assist the competent authorities in taking the border measures referred to in this Subsection. A Party may also allow a right holder to supply relevant information to its competent authorities.

**Article 11.71: Infringement Determination within Reasonable Period by Competent Authorities<sup>60</sup>**

Each Party shall adopt or maintain procedures under which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in Article 11.65 (Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by Right Holder's Application) and Article 11.69 (Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by *Ex Officio* Action), whether suspected pirated copyright goods or counterfeit trademark goods are infringing intellectual property rights.

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<sup>60</sup> A Party may comply with the obligation under this Article with respect to a determination that suspected goods under Article 11.69 (Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by *Ex Officio* Action) infringe an intellectual property right through a determination that the suspected goods bear a false trade description.

### **Article 11.72: Destruction Order by Competent Authorities**

Each Party shall provide that, without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, its competent authorities shall have the authority to order the destruction and the authority to order the disposal of goods that are determined to be pirated copyright goods or counterfeit trademark goods. In cases where such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.

### **Article 11.73: Fees**

Where an application fee, merchandise storage fee, or destruction fee is established or assessed in connection with border measures to enforce an intellectual property right, each Party shall provide that the fee shall not be set at an amount that unreasonably deters recourse to these measures.

## **SUBSECTION 4 CRIMINAL REMEDIES**

### **Article 11.74: Criminal Procedures and Penalties**

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful copyright or related rights piracy or trademark counterfeiting on a commercial scale.<sup>61</sup>
2. Each Party shall treat wilful importation of pirated copyright goods or counterfeit trademark goods on a commercial scale as unlawful activities subject to the criminal procedures and penalties referred to in paragraph 1. A Party may comply with its obligation relating to importation under this Article by providing that distribution or

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<sup>61</sup> For the purposes of the application of this Article, paragraph 1 shall not prevent a Party from determining the scope of application of criminal procedures and penalties in case of wilful related rights piracy on a commercial scale, in accordance with its laws and regulations.

sale of such goods on a commercial scale is an unlawful activity subject to criminal penalties.

3. With respect to the offences described in paragraphs 1 and 2, each Party shall provide for the following:
  - (a) penalties that include sentences of imprisonment as well as monetary fines sufficient to provide a deterrent consistent with the level of penalties applied for crimes of a corresponding gravity;<sup>62</sup>
  - (b) its judicial authorities have the authority to order the seizure<sup>63</sup> of suspected pirated copyright goods or counterfeit trademark goods, related materials and implements predominantly used in the commission of the offence, and documentary evidence relevant to the alleged offence; and
  - (c) its judicial authorities have the authority to order, without compensation of any kind for the defendant, the forfeiture or destruction of:
    - (i) pirated copyright goods or counterfeit trademark goods;
    - (ii) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trademark goods; and
    - (iii) any other labels or packaging to which a counterfeit trademark has been applied and that have been used in the commission of the offence.
4. Recognising the need to address the unauthorised copying<sup>64</sup> of a cinematographic work on a commercial scale from a performance in a movie theatre, which causes significant harm to a right holder

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<sup>62</sup> Nothing in this Article shall be construed to oblige a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

<sup>63</sup> A Party may comply with its obligations under this subparagraph, with respect to pre-trial seizure, by providing its criminal enforcement authorities with the authority to order such seizures.

<sup>64</sup> For the purposes of this paragraph, a Party may treat “copying” as synonymous with “reproduction”.

in the market for that work, and recognising the need to deter such harm, each Party shall adopt or maintain measures, which shall at a minimum include appropriate criminal procedures and penalties.<sup>65</sup>

## **SUBSECTION 5 ENFORCEMENT IN THE DIGITAL ENVIRONMENT**

### **Article 11.75: Effective Action against Infringement in the Digital Environment**

Each Party confirms that the enforcement procedures set out in Subsection 2 (Civil Remedies) and Subsection 4 (Criminal Remedies) shall be available to the same extent with respect to acts of infringement of copyright or related rights and trademarks, in the digital environment.

## **SECTION K COOPERATION AND CONSULTATION**

### **Article 11.76: Cooperation and Dialogue**

1. The Parties recognise the importance of the utilisation and protection of intellectual property and enforcement of intellectual property rights in further promoting trade and investment among the Parties.
2. The Parties acknowledge the significant differences in capacity between some Parties in the area of intellectual property.
3. To facilitate the effective implementation of this Chapter, each Party shall cooperate with other Parties in the area of intellectual property, and engage in dialogue and information exchange on intellectual property issues.
4. The Parties shall endeavour to cooperate in order to promote education and awareness regarding the effective utilisation and protection of intellectual property and enforcement of intellectual property rights.

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<sup>65</sup> For the purposes of this paragraph, a Party may determine specific criminal thresholds for unauthorised copying of a cinematographic work in accordance with its laws and regulations.



5. The Parties shall cooperate on border measures with a view to eliminating international trade in goods that infringe intellectual property rights.
6. The Parties shall endeavour to, where appropriate, cooperate among their respective patent offices to facilitate the sharing of search and examination work, and exchanges of information on quality assurance systems which may facilitate better understanding in the Parties' patent systems.<sup>66</sup>
7. The Parties shall endeavour to cooperate by sharing information on steps each Party is taking to help prevent online copyright infringement.
8. The Parties may cooperate on the administration of systems for the protection of new varieties of plants, including exceptions to the breeder's rights, in relation to paragraph 3 of Article 11.9 (Multilateral Agreements) or Article 11.48 (Protection of New Varieties of Plants).
9. The Parties shall endeavour to cooperate on issues relating to patent grace periods in order to support innovation.
10. The Parties may cooperate on issues relating to the procedures and processes of their respective patent offices, with a view to reducing the cost of obtaining the grant of a patent.
11. The Parties may exchange information on the protection of their respective geographical indications, including information on systems, procedures, and goods covered.
12. The Parties may cooperate on the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.
13. All cooperation activities under this Chapter shall be on request of a Party, on mutually agreed terms, and subject to the relevant laws and regulations and availability of resources of the Parties involved.

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<sup>66</sup> This paragraph may apply to multilateral information sharing systems to support work-sharing initiatives.

## **SECTION L TRANSPARENCY**

### **Article 11.77: Transparency**

1. Each Party shall provide that final judicial decisions and administrative rulings of general application that pertain to the availability, scope, acquisition, enforcement, and prevention of the abuse of intellectual property rights shall be published, or where such publication is not practicable, made publicly available, in at least a national language of that Party in such a manner as to enable the other Parties and right holders to become acquainted with them. Each Party shall endeavour to provide that such final judicial decisions be published online, where feasible.<sup>67</sup>
2. Each Party shall take appropriate measures, to the extent possible under its laws and regulations, to publish or make available to the public, information on applications and registrations of intellectual property rights, and where applicable, legal status information thereof, such as registration and expiration dates.

## **SECTION M TRANSITION PERIODS AND TECHNICAL ASSISTANCE**

### **Article 11.78: Transitional Periods for Least Developed Country Parties under the TRIPS Agreement**

Nothing in this Chapter shall derogate from the rights of any Party to avail itself of any applicable transitional period under the TRIPS Agreement that has been or may be agreed in the WTO, either before, on, or after the date of entry into force of this Agreement.

### **Article 11.79: Party-Specific Transition Periods**

1. Noting each Party's different stage of development, and without prejudice to Article 11.78 (Transitional Periods for Least Developed Country Parties under the TRIPS Agreement), a Party may delay the implementation of certain provisions of this Chapter

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<sup>67</sup> For greater certainty, nothing in this paragraph shall require a Party to specify online publication in its laws and regulations.

in accordance with Annex 11A (Party-Specific Transition Periods).

2. During the relevant periods set out in Annex 11A (Party-Specific Transition Periods), a Party shall not amend a measure to make it less consistent with its obligations under the provisions referred to in Annex 11A (Party-Specific Transition Periods) for that Party, or adopt a new measure that is less consistent with those obligations than relevant measures of that Party that are in effect on the date of signature of this Agreement. This Article does not affect the rights and obligations of a Party under an international agreement to which it and another Party are party.

#### **Article 11.80: Notifications in Relation to Party-Specific Transition Periods**

1. Any Party which has a Party-specific transition period for any obligation under this Chapter as set out in Annex 11A (Party-Specific Transition Periods) shall provide a notification to the Committee on the Business Environment on its plans for and progress towards implementing each such obligation, after the date of entry into force of this Agreement for that Party, as follows:
  - (a) for any transition period of five years or less, that Party shall provide a notification six months before the expiration of the transition period; and
  - (b) for any transition period of more than five years, that Party shall provide an annual notification on the anniversary of the date of entry into force of this Agreement for that Party, beginning on the fifth anniversary for that Party, and a notification six months before the expiration of the transition period.<sup>68</sup>
2. Any Party may request additional information regarding another Party's progress towards implementing the obligation. The requested Party shall promptly reply to such a request.
3. No later than the date on which a transition period expires, a Party with a Party-specific transition period shall provide a notification to the other Parties of what measures it has taken to implement the obligation for which it has a transition period.

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<sup>68</sup> For greater certainty, this subparagraph shall also apply to any extension of a transition period set out in Annex 11A (Party-Specific Transition Periods).

4. If a Party fails to provide the notification referred to in paragraph 3, the matter shall be automatically placed on the agenda for the next regular meeting of the Committee on the Business Environment.

#### **Article 11.81: Technical Assistance**

1. In accordance with the objectives of Chapter 15 (Economic and Technical Cooperation), the Parties agree to undertake the necessary technical assistance, pursuant to the identified needs for the implementation of this Chapter, as set out in Annex 11B (List of Technical Assistance Requests).
2. The technical assistance referred to in paragraph 1 shall be on mutually agreed terms, subject to the relevant rules and regulations and availability of resources of the Parties involved.

### **SECTION N PROCEDURAL MATTERS**

#### **Article 11.82: Improvement of Procedures for the Administration of Intellectual Property Rights**

The Parties recognise the importance of providing efficient administration of their intellectual property systems, and in this regard each Party shall continue to review and endeavour, where appropriate, to make improvements to its procedures for the administration of intellectual property rights.

#### **Article 11.83: Streamlining of Procedural Requirements on Paper**

Further to Article 11.82 (Improvement of Procedures for the Administration of Intellectual Property Rights), each Party shall endeavour to streamline any procedural requirements it maintains regarding:

- (a) the certification of translations in relation to patent applications; and
- (b) the authentication of signatures in relation to applications for patents, industrial designs, and trademarks.