

## Berne Convention for the Protection of Literary and Artistic Works

Paris Act  
of July 24, 1971,  
as amended on  
September 28, 1979

## Berne Convention for the Protection of Literary and Artistic Works

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and at PARIS on July 24, 1971,  
and amended on September 28, 1979

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The countries of the Union, being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works,

Recognizing the importance of the work of the Revision Conference held at Stockholm in 1967,

Have resolved to revise the Act adopted by the Stockholm Conference, while maintaining without change Articles 1 to 20 and 22 to 26 of that Act.

Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognized as in good and due form, have agreed as follows:

### Article 1

#### *[Establishment of a Union]*<sup>1</sup>

The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

### Article 2

*[Protected Works:* 1. “Literary and artistic works”; 2. Possible requirement of fixation; 3. Derivative works; 4. Official texts; 5. Collections; 6. Obligation to protect; beneficiaries of protection; 7. Works of applied art and industrial designs; 8. News]

(1) The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.

(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.

(4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

(5) Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.

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<sup>1</sup> Each Article and the Appendix have been given titles to facilitate their identification. There are no titles in the signed (English) text.

(6) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.

(7) Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.

(8) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

### Article 2<sup>bis</sup>

*[Possible Limitation of Protection of Certain Works: 1. Certain speeches; 2. Certain uses of lectures and addresses; 3. Right to make collections of such works]*

(1) It shall be a matter for legislation in the countries of the Union to exclude, wholly or in part, from the protection provided by the preceding Article political speeches and speeches delivered in the course of legal proceedings.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses and other works of the same nature which are delivered in public may be reproduced by the press, broadcast, communicated to the public by wire and made the subject of public communication as envisaged in Article 11<sup>bis</sup>(1) of this Convention, when such use is justified by the informatory purpose.

(3) Nevertheless, the author shall enjoy the exclusive right of making a collection of his works mentioned in the preceding paragraphs.

### Article 3

*[Criteria of Eligibility for Protection: 1. Nationality of author; place of publication of work; 2. Residence of author; 3. "Published" works; 4. "Simultaneously published" works]*

(1) The protection of this Convention shall apply to:

- (a) authors who are nationals of one of the countries of the Union, for their works, whether published or not;
- (b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

(2) Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.

(3) The expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

#### Article 4

[Criteria of Eligibility for Protection of Cinematographic Works, Works of Architecture and Certain Artistic Works]

The protection of this Convention shall apply, even if the conditions of Article 3 are not fulfilled, to:

- (a) authors of cinematographic works the maker of which has his headquarters or habitual residence in one of the countries of the Union;
- (b) authors of works of architecture erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.

#### Article 5

[Rights Guaranteed: 1. and 2. Outside the country of origin; 3. In the country of origin; 4. "Country of origin"]

(1) Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.

(4) The country of origin shall be considered to be:

- (a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection;
- (b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;
- (c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that:
  - (i) when these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, the country of origin shall be that country, and
  - (ii) when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, the country of origin shall be that country.

#### Article 6

[Possible Restriction of Protection in Respect of Certain Works of Nationals of Certain Countries Outside the Union: 1. In the country of the first publication and in other countries; 2. No retroactivity; 3. Notice]

(1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

(3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Director General of the World Intellectual Property Organization (hereinafter designated as “the Director General”) by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Director General shall immediately communicate this declaration to all the countries of the Union.

### Article 6<sup>bis</sup>

[*Moral Rights*: 1. To claim authorship; to object to certain modifications and other derogatory actions; 2. After the author’s death; 3. Means of redress]

(1) Independently of the author’s economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

### Article 7

[*Term of Protection*: 1. Generally; 2. For cinematographic works; 3. For anonymous and pseudonymous works; 4. For photographic works and works of applied art; 5. Starting date of computation; 6. Longer terms; 7. Shorter terms; 8. Applicable law; “comparison” of terms]

(1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.

(2) However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making of such a work, fifty years after the making.

(3) In the case of anonymous or pseudonymous works, the term of protection granted by this Convention shall expire fifty years after the work has been lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1). The countries of the Union shall not be required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for fifty years.

(4) It shall be a matter for legislation in the countries of the Union to determine the term of protection of photographic works and that of works of applied art in so far as they are protected as artistic works; however, this term shall last at least until the end of a period of twenty-five years from the making of such a work.

(5) The term of protection subsequent to the death of the author and the terms provided by paragraphs (2), (3) and (4) shall run from the date of death or of the event referred to in those paragraphs, but such terms shall always be deemed to begin on the first of January of the year following the death or such event.

(6) The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs.

(7) Those countries of the Union bound by the Rome Act of this Convention which grant, in their national legislation in force at the time of signature of the present Act, shorter terms of protection than those provided for in the preceding paragraphs shall have the right to maintain such terms when ratifying or acceding to the present Act.

(8) In any case, the term shall be governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.

### **Article 7<sup>bis</sup>**

*[Term of Protection for Works of Joint Authorship]*

The provisions of the preceding Article shall also apply in the case of a work of joint authorship, provided that the terms measured from the death of the author shall be calculated from the death of the last surviving author.

### **Article 8**

*[Right of Translation]*

Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

### **Article 9**

*[Right of Reproduction: 1. Generally; 2. Possible exceptions; 3. Sound and visual recordings]*

(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

(3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

### **Article 10**

*[Certain Free Uses of Works: 1. Quotations; 2. Illustrations for teaching; 3. Indication of source and author]*

(1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.

(3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon.



### Article 10<sup>bis</sup>

[Further Possible Free Uses of Works: 1. Of certain articles and broadcast works; 2. Of works seen or heard in connection with current events]

(1) It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

### Article 11

[Certain Rights in Dramatic and Musical Works: 1. Right of public performance and of communication to the public of a performance; 2. In respect of translations]

(1) Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:

- (i) the public performance of their works, including such public performance by any means or process;
- (ii) any communication to the public of the performance of their works.

(2) Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

### Article 11<sup>bis</sup>

[Broadcasting and Related Rights: 1. Broadcasting and other wireless communications, public communication of broadcast by wire or rebroadcast, public communication of broadcast by loudspeaker or analogous instruments; 2. Compulsory licenses; 3. Recording; ephemeral recordings]

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:

- (i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;
- (ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;
- (iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

### Article 11<sup>ter</sup>

[*Certain Rights in Literary Works*: 1. Right of public recitation and of communication to the public of a recitation; 2. In respect of translations]

- (1) Authors of literary works shall enjoy the exclusive right of authorizing:
  - (i) the public recitation of their works, including such public recitation by any means or process;
  - (ii) any communication to the public of the recitation of their works.
- (2) Authors of literary works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

### Article 12

[*Right of Adaptation, Arrangement and Other Alteration*]

Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.

### Article 13

[*Possible Limitation of the Right of Recording of Musical Works and Any Words Pertaining Thereto*:

1. Compulsory licenses; 2. Transitory measures; 3. Seizure on importation of copies made without the author's permission]

(1) Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of that musical work, together with such words, if any; but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(2) Recordings of musical works made in a country of the Union in accordance with Article 13(3) of the Conventions signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of the musical work until a date two years after that country becomes bound by this Act.

(3) Recordings made in accordance with paragraphs (1) and (2) of this Article and imported without permission from the parties concerned into a country where they are treated as infringing recordings shall be liable to seizure.

### Article 14

[*Cinematographic and Related Rights*: 1. Cinematographic adaptation and reproduction; distribution; public performance and public communication by wire of works thus adapted or reproduced; 2. Adaptation of cinematographic productions; 3. No compulsory licenses]

- (1) Authors of literary or artistic works shall have the exclusive right of authorizing:
  - (i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;
  - (ii) the public performance and communication to the public by wire of the works thus adapted or reproduced.
- (2) The adaptation into any other artistic form of a cinematographic production derived from literary or artistic works shall, without prejudice to the authorization of the author of the cinematographic production, remain subject to the authorization of the authors of the original works.
- (3) The provisions of Article 13(1) shall not apply.

### Article 14<sup>bis</sup>

[*Special Provisions Concerning Cinematographic Works*: 1. Assimilation to “original” works; 2. Ownership; limitation of certain rights of certain contributors; 3. Certain other contributors]

(1) Without prejudice to the copyright in any work which may have been adapted or reproduced, a cinematographic work shall be protected as an original work. The owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding Article.

(2)

(a) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.

(b) However, in the countries of the Union which, by legislation, include among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work.

(c) The question whether or not the form of the undertaking referred to above should, for the application of the preceding subparagraph (b), be in a written agreement or a written act of the same effect shall be a matter for the legislation of the country where the maker of the cinematographic work has his headquarters or habitual residence. However, it shall be a matter for the legislation of the country of the Union where protection is claimed to provide that the said undertaking shall be in a written agreement or a written act of the same effect. The countries whose legislation so provides shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

(d) By “contrary or special stipulation” is meant any restrictive condition which is relevant to the aforesaid undertaking.

(3) Unless the national legislation provides to the contrary, the provisions of paragraph (2)(b) above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, or to the principal director thereof. However, those countries of the Union whose legislation does not contain rules providing for the application of the said paragraph (2)(b) to such director shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

### Article 14<sup>ter</sup>

[*“Droit de suite” in Works of Art and Manuscripts*:

1. Right to an interest in resales; 2. Applicable law; 3. Procedure]

(1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

(3) The procedure for collection and the amounts shall be matters for determination by national legislation.

## Article 15

*[Right to Enforce Protected Rights: 1. Where author's name is indicated or where pseudonym leaves no doubt as to author's identity; 2. In the case of cinematographic works; 3. In the case of anonymous and pseudonymous works; 4. In the case of certain unpublished works of unknown authorship]*

(1) In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity.

(2) The person or body corporate whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.

(3) In the case of anonymous and pseudonymous works, other than those referred to in paragraph (1) above, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply when the author reveals his identity and establishes his claim to authorship of the work.

(4)

(a) In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.

(b) Countries of the Union which make such designation under the terms of this provision shall notify the Director General by means of a written declaration giving full information concerning the authority thus designated. The Director General shall at once communicate this declaration to all other countries of the Union.

## Article 16

*[Infringing Copies: 1. Seizure; 2. Seizure on importation; 3. Applicable law]*

(1) Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection.

(2) The provisions of the preceding paragraph shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected.

(3) The seizure shall take place in accordance with the legislation of each country.

## Article 17

*[Possibility of Control of Circulation, Presentation and Exhibition of Works]*

The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

## Article 18

*[Works Existing on Convention's Entry Into Force: 1. Protectable where protection not yet expired in country of origin; 2. Non-protectable where protection already expired in country where it is claimed; 3. Application of these principles; 4. Special cases]*

(1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.

(2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew.

(3) The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle.

(4) The preceding provisions shall also apply in the case of new accessions to the Union and to cases in which protection is extended by the application of Article 7 or by the abandonment of reservations.

### Article 19

*[Protection Greater than Resulting from Convention]*

The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union.

### Article 20

*[Special Agreements Among Countries of the Union]*

The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention. The provisions of existing agreements which satisfy these conditions shall remain applicable.

### Article 21

*[Special Provisions Regarding Developing Countries: 1. Reference to Appendix; 2. Appendix part of Act]*

- (1) Special provisions regarding developing countries are included in the Appendix.
- (2) Subject to the provisions of Article 28(1)(b), the Appendix forms an integral part of this Act.

### Article 22

*[Assembly: 1. Constitution and composition; 2. Tasks; 3. Quorum, voting, observers; 4. Convocation; 5. Rules of procedure]*

(1)

(a) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 22 to 26.

(b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(2)

(a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;

(ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau") referred to in the Convention Establishing the World Intellectual Property Organization (hereinafter designated as "the Organization"), due account being taken of any comments made by those countries of the Union which are not bound by Articles 22 to 26;

- (iii) review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;
- (iv) elect the members of the Executive Committee of the Assembly;
- (v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;
- (vi) determine the program and adopt the biennial budget of the Union, and approve its final accounts;
- (vii) adopt the financial regulations of the Union;
- (viii) establish such committees of experts and working groups as may be necessary for the work of the Union;
- (ix) determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- (x) adopt amendments to Articles 22 to 26;
- (xi) take any other appropriate action designed to further the objectives of the Union;
- (xii) exercise such other functions as are appropriate under this Convention;
- (xiii) subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3)

(a) Each country member of the Assembly shall have one vote.

(b) One-half of the countries members of the Assembly shall constitute a quorum.

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the following conditions are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 26(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(f) A delegate may represent, and vote in the name of, one country only.

(g) Countries of the Union not members of the Assembly shall be admitted to its meetings as observers.

(4)

(a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the countries members of the Assembly.

(5) The Assembly shall adopt its own rules of procedure.

### Article 23

[*Executive Committee*: 1. Constitution; 2. Composition; 3. Number of members; 4. Geographical distribution; special agreements; 5. Term, limits of re-eligibility, rules of election; 6. Tasks; 7. Convocation; 8. Quorum, voting; 9. Observers; 10. Rules of procedure]

(1) The Assembly shall have an Executive Committee.

(2)

(a) The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 25(7)(b), have an ex officio seat on the Committee.

(b) The Government of each country member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(3) The number of countries members of the Executive Committee shall correspond to one-fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution and to the need for countries party to the Special Agreements which might be established in relation with the Union to be among the countries constituting the Executive Committee.

(5)

(a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.

(b) Members of the Executive Committee may be re-elected, but not more than two-thirds of them.

(c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

(6)

(a) The Executive Committee shall:

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly respecting the draft program and biennial budget of the Union prepared by the Director General;

(iii) *[deleted]*

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly, take all necessary measures to ensure the execution of the program of the Union by the Director General;

(vi) perform such other functions as are allocated to it under this Convention.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(7)

(a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

(b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.

(8)

(a) Each country member of the Executive Committee shall have one vote.

(b) One-half of the members of the Executive Committee shall constitute a quorum.

- (c) Decisions shall be made by a simple majority of the votes cast.
- (d) Abstentions shall not be considered as votes.
- (e) A delegate may represent, and vote in the name of, one country only.
- (9) Countries of the Union not members of the Executive Committee shall be admitted to its meetings as observers.
- (10) The Executive Committee shall adopt its own rules of procedure.

#### Article 24

[*International Bureau*: 1. Tasks in general, Director General; 2. General information; 3. Periodical; 4. Information to countries; 5. Studies and services; 6. Participation in meetings; 7. Conferences of revision; 8. Other tasks]

(1)

(a) The administrative tasks with respect to the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property.

(b) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.

(c) The Director General of the Organization shall be the chief executive of the Union and shall represent the Union.

(2) The International Bureau shall assemble and publish information concerning the protection of copyright. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of copyright.

(3) The International Bureau shall publish a monthly periodical.

(4) The International Bureau shall, on request, furnish information to any country of the Union on matters concerning the protection of copyright.

(5) The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of copyright.

(6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee and any other committee of experts or working group. The Director General, or a staff member designated by him, shall be ex officio secretary of these bodies.

(7)

(a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 22 to 26.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at these conferences.

(8) The International Bureau shall carry out any other tasks assigned to it.

#### Article 25

[*Finances*: 1. Budget; 2. Coordination with other Unions; 3. Resources; 4. Contributions; possible extension of previous budget; 5. Fees and charges; 6. Working capital fund; 7. Advances by host Government; 8. Auditing of accounts]

(1)

(a) The Union shall have a budget.



(b) The budget of the Union shall include the income and expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Union shall be financed from the following sources:

- (i) contributions of the countries of the Union;
- (ii) fees and charges due for services performed by the International Bureau in relation to the Union;
- (iii) sale of, or royalties on, the publications of the International Bureau concerning the Union;
- (iv) gifts, bequests, and subventions;
- (v) rents, interests, and other miscellaneous income.

(4)

(a) For the purpose of establishing its contribution towards the budget, each country of the Union shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

Class I	25
Class II	20
Class III	15
Class IV	10
Class V	5
Class VI	3
Class VII	1

(b) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If it chooses a lower class, the country must announce it to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session.

(c) The annual contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the annual budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.

(d) Contributions shall become due on the first of January of each year.

(e) A country which is in arrears in the payment of its contributions shall have no vote in any of the organs of the Union of which it is a member if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(f) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, in accordance with the financial regulations.

(5) The amount of the fees and charges due for services rendered by the International Bureau in relation to the Union shall be established, and shall be reported to the Assembly and the Executive Committee, by the Director General.

(6)

(a) The Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Union. If the fund becomes insufficient, an increase shall be decided by the Assembly.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the increase decided.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(7)

(a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization. As long as it remains under the obligation to grant advances, such country shall have an ex officio seat on the Executive Committee.

(b) The country referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(8) The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

### Article 26

[Amendments: 1. Provisions susceptible of amendment by the Assembly; proposals; 2. Adoption; 3. Entry into force]

(1) Proposals for the amendment of Articles 22, 23, 24, 25, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment of Article 22, and of the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

### Article 27

[Revision: 1. Objective; 2. Conferences; 3. Adoption]

(1) This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.

(2) For this purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.

(3) Subject to the provisions of Article 26 which apply to the amendment of Articles 22 to 26, any revision of this Act, including the Appendix, shall require the unanimity of the votes cast.

### Article 28

[Acceptance and Entry Into Force of Act for Countries of the Union: 1. Ratification, accession; possibility of excluding certain provisions; withdrawal of exclusion; 2. Entry into force of Articles 1 to 21 and Appendix; 3. Entry into force of Articles 22 to 38]

(1)

(a) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification or accession shall be deposited with the Director General.

(b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply to Articles 1 to 21 and the Appendix, provided that, if such country has previously made a declaration under Article VI(1) of the Appendix, then it may declare in the said instrument only that its ratification or accession shall not apply to Articles 1 to 20.

(c) Any country of the Union which, in accordance with subparagraph (b), has excluded provisions therein referred to from the effects of its ratification or accession may at any later time declare that it extends the effects of its ratification or accession to those provisions. Such declaration shall be deposited with the Director General.

(2)

(a) Articles 1 to 21 and the Appendix shall enter into force three months after both of the following two conditions are fulfilled:

- (i) at least five countries of the Union have ratified or acceded to this Act without making a declaration under paragraph (1)(b),
- (ii) France, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, have become bound by the Universal Copyright Convention as revised at Paris on July 24, 1971.

(b) The entry into force referred to in subparagraph (a) shall apply to those countries of the Union which, at least three months before the said entry into force, have deposited instruments of ratification or accession not containing a declaration under paragraph (1)(b).

(c) With respect to any country of the Union not covered by subparagraph (b) and which ratifies or accedes to this Act without making a declaration under paragraph (1)(b), Articles 1 to 21 and the Appendix shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 1 to 21 and the Appendix shall enter into force with respect to that country on the date thus indicated.

(d) The provisions of subparagraphs (a) to (c) do not affect the application of Article VI of the Appendix.

(3) With respect to any country of the Union which ratifies or accedes to this Act with or without a declaration made under paragraph (1)(b), Articles 22 to 38 shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 22 to 38 shall enter into force with respect to that country on the date thus indicated.

## Article 29

*[Acceptance and Entry Into Force for Countries Outside the Union: 1. Accession; 2. Entry into force]*

(1) Any country outside the Union may accede to this Act and thereby become party to this Convention and a member of the Union. Instruments of accession shall be deposited with the Director General.

(2)

(a) Subject to subparagraph (b), this Convention shall enter into force with respect to any country outside the Union three months after the date on which the Director General has notified the deposit of its instrument of accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, this Convention shall enter into force with respect to that country on the date thus indicated.

(b) If the entry into force according to subparagraph (a) precedes the entry into force of Articles 1 to 21 and the Appendix according to Article 28(2)(a), the said country shall, in the meantime, be bound, instead of by Articles 1 to 21 and the Appendix, by Articles 1 to 20 of the Brussels Act of this Convention.

### Article 29<sup>bis</sup>

[*Effect of Acceptance of Act for the Purposes of Article 14(2) of the WIPO Convention*]

Ratification of or accession to this Act by any country not bound by Articles 22 to 38 of the Stockholm Act of this Convention shall, for the sole purposes of Article 14(2) of the Convention establishing the Organization, amount to ratification of or accession to the said Stockholm Act with the limitation set forth in Article 28(1)(b)(i) thereof.

### Article 30

[*Reservations: 1. Limits of possibility of making reservations; 2. Earlier reservations; reservation as to the right of translation; withdrawal of reservation*]

(1) Subject to the exceptions permitted by paragraph (2) of this Article, by Article 28(1)(b), by Article 33(2), and by the Appendix, ratification or accession shall automatically entail acceptance of all the provisions and admission to all the advantages of this Convention.

(2)

(a) Any country of the Union ratifying or acceding to this Act may, subject to Article V(2) of the Appendix, retain the benefit of the reservations it has previously formulated on condition that it makes a declaration to that effect at the time of the deposit of its instrument of ratification or accession.

(b) Any country outside the Union may declare, in acceding to this Convention and subject to Article V(2) of the Appendix, that it intends to substitute, temporarily at least, for Article 8 of this Act concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into a language in general use in the said country. Subject to Article I(6)(b) of the Appendix, any country has the right to apply, in relation to the right of translation of works whose country of origin is a country availing itself of such a reservation, a protection which is equivalent to the protection granted by the latter country.

(c) Any country may withdraw such reservations at any time by notification addressed to the Director General.

### Article 31

[*Applicability to Certain Territories: 1. Declaration; 2. Withdrawal of declaration; 3. Effective date; 4. Acceptance of factual situations not implied*]

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification at any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3)

(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in which it was included, and any notification given under that paragraph shall take effect three months after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

(4) This Article shall in no way be understood as implying the recognition or tacit acceptance by a country of the Union of the factual situation concerning a territory to which this Convention is made applicable by another country of the Union by virtue of a declaration under paragraph (1).

### Article 32

[*Applicability of this Act and of Earlier Acts:* 1. As between countries already members of the Union; 2. As between a country becoming a member of the Union and other countries members of the Union;  
3. Applicability of the Appendix in Certain Relations]

(1) This Act shall, as regards relations between the countries of the Union, and to the extent that it applies, replace the Berne Convention of September 9, 1886, and the subsequent Acts of revision. The Acts previously in force shall continue to be applicable, in their entirety or to the extent that this Act does not replace them by virtue of the preceding sentence, in relations with countries of the Union which do not ratify or accede to this Act.

(2) Countries outside the Union which become party to this Act shall, subject to paragraph (3), apply it with respect to any country of the Union not bound by this Act or which, although bound by this Act, has made a declaration pursuant to Article 28(1)(b). Such countries recognize that the said country of the Union, in its relations with them:

- (i) may apply the provisions of the most recent Act by which it is bound, and
- (ii) subject to Article I(6) of the Appendix, has the right to adapt the protection to the level provided for by this Act.

(3) Any country which has availed itself of any of the faculties provided for in the Appendix may apply the provisions of the Appendix relating to the faculty or faculties of which it has availed itself in its relations with any other country of the Union which is not bound by this Act, provided that the latter country has accepted the application of the said provisions.

### Article 33

[*Disputes:* 1. Jurisdiction of the International Court of Justice; 2. Reservation as to such jurisdiction; 3. Withdrawal of reservation]

(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

### Article 34

[*Closing of Certain Earlier Provisions:* 1. Of earlier Acts; 2. Of the Protocol to the Stockholm Act]

(1) Subject to Article 29<sup>bis</sup> no country may ratify or accede to earlier Acts of this Convention once Articles 1 to 21 and the Appendix have entered into force.

(2) Once Articles 1 to 21 and the Appendix have entered into force, no country may make a declaration under Article 5 of the Protocol Regarding Developing Countries attached to the Stockholm Act.

### Article 35

[*Duration of the Convention; Denunciation:* 1. Unlimited duration; 2. Possibility of denunciation;  
3. Effective date of denunciation; 4. Moratorium on denunciation]

(1) This Convention shall remain in force without limitation as to time.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

### Article 36

[*Application of the Convention:* 1. Obligation to adopt the necessary measures; 2. Time from which obligation exists]

(1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

(2) It is understood that, at the time a country becomes bound by this Convention, it will be in a position under its domestic law to give effect to the provisions of this Convention.

### Article 37

[*Final Clauses:* 1. Languages of the Act; 2. Signature; 3. Certified copies; 4. Registration; 5. Notifications]

(1)

(a) This Act shall be signed in a single copy in the French and English languages and, subject to paragraph (2), shall be deposited with the Director General.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the Arabic, German, Italian, Portuguese and Spanish languages, and such other languages as the Assembly may designate.

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

(2) This Act shall remain open for signature until January 31, 1972. Until that date, the copy referred to in paragraph (1)(a) shall be deposited with the Government of the French Republic.

(3) The Director General shall certify and transmit two copies of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretariat of the United Nations.

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Articles 28(1)(c), 30(2)(a) and (b), and 33(2), entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Articles 30(2)(c), 31(1) and (2), 33(3), and 38(1), as well as the Appendix.

### Article 38

[*Transitory Provisions:* 1. Exercise of the "five-year privilege"; 2. Bureau of the Union, Director of the Bureau; 3. Succession of Bureau of the Union]

(1) Countries of the Union which have not ratified or acceded to this Act and which are not bound by Articles 22 to 26 of the Stockholm Act of this Convention may, until April 26, 1975, exercise, if they so desire, the rights provided under the said Articles as if they were bound by them. Any country desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such countries shall be deemed to be members of the Assembly until the said date.



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(2) As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau.

(3) Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

## APPENDIX

### [SPECIAL PROVISIONS REGARDING DEVELOPING COUNTRIES]

#### Article I

[*Faculties Open to Developing Countries:* 1. Availability of certain faculties; declaration: 2. Duration of effect of declaration, 3. Cessation of developing country status; 4. Existing stocks of copies; 5. Declarations concerning certain territories; 6. Limits of reciprocity]

(1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act, may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article V(1)(c), at any time thereafter, declare that it will avail itself of the faculty provided for in Article II, or of the faculty provided for in Article III, or of both of those faculties. It may, instead of availing itself of the faculty provided for in Article II, make a declaration according to Article V(1)(a).

(2)

(a) Any declaration under paragraph (1) notified before the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the said period. Any such declaration may be renewed in whole or in part for periods of ten years each by a notification deposited with the Director General not more than fifteen months and not less than three months before the expiration of the ten-year period then running.

(b) Any declaration under paragraph (1) notified after the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the ten-year period then running. Any such declaration may be renewed as provided for in the second sentence of subparagraph (a).

(3) Any country of the Union which has ceased to be regarded as a developing country as referred to in paragraph (1) shall no longer be entitled to renew its declaration as provided in paragraph (2), and, whether or not it formally withdraws its declaration, such country shall be precluded from availing itself of the faculties referred to in paragraph (1) from the expiration of the ten-year period then running or from the expiration of a period of three years after it has ceased to be regarded as a developing country, whichever period expires later.

(4) Where, at the time when the declaration made under paragraph (1) or (2) ceases to be effective, there are copies in stock which were made under a license granted by virtue of this Appendix, such copies may continue to be distributed until their stock is exhausted.

(5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the declaration referred to in paragraph (1) and the notification of renewal referred to in paragraph (2). As long as such declaration or notification remains in effect, the provisions of this Appendix shall be applicable to the territory in respect of which it was made.

(6)

(a) The fact that a country avails itself of any of the faculties referred to in paragraph (1) does not permit another country to give less protection to works of which the country of origin is the former country than it is obliged to grant under Articles 1 to 20.

(b) The right to apply reciprocal treatment provided for in Article 30(2)(b), second sentence, shall not, until the date on which the period applicable under Article I(3) expires, be exercised in respect of works the country of origin of which is a country which has made a declaration according to Article V(1)(a).



## Article II

[*Limitations on the Right of Translation:* 1. Licenses grantable by competent authority; 2. to 4. Conditions allowing the grant of such licenses; 5. Purposes for which licenses may be granted; 6. Termination of licenses; 7. Works composed mainly of illustrations; 8. Works withdrawn from circulation; 9. Licenses for broadcasting organizations]

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled, so far as works published in printed or analogous forms of reproduction are concerned, to substitute for the exclusive right of translation provided for in Article 8 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

(2)

(a) Subject to paragraph (3), if, after the expiration of a period of three years, or of any longer period determined by the national legislation of the said country, commencing on the date of the first publication of the work, a translation of such work has not been published in a language in general use in that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to make a translation of the work in the said language and publish the translation in printed or analogous forms of reproduction.

(b) A license under the conditions provided for in this Article may also be granted if all the editions of the translation published in the language concerned are out of print.

(3)

(a) In the case of translations into a language which is not in general use in one or more developed countries which are members of the Union, a period of one year shall be substituted for the period of three years referred to in paragraph (2)(a).

(b) Any country referred to in paragraph (1) may, with the unanimous agreement of the developed countries which are members of the Union and in which the same language is in general use, substitute, in the case of translations into that language, for the period of three years referred to in paragraph (2)(a) a shorter period as determined by such agreement but not less than one year. However, the provisions of the foregoing sentence shall not apply where the language in question is English, French or Spanish. The Director General shall be notified of any such agreement by the Governments which have concluded it.

(4)

(a) No license obtainable after three years shall be granted under this Article until a further period of six months has elapsed, and no license obtainable after one year shall be granted under this Article until a further period of nine months has elapsed

(i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or

(ii) where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.

(b) If, during the said period of six or nine months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorization, no license under this Article shall be granted.

(5) Any license under this Article shall be granted only for the purpose of teaching, scholarship or research.

(6) If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such translation is in the same language and with substantially the same content as the translation published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7) For works which are composed mainly of illustrations, a license to make and publish a translation of the text and to reproduce and publish the illustrations may be granted only if the conditions of Article III are also fulfilled.

(8) No license shall be granted under this Article when the author has withdrawn from circulation all copies of his work.

(9)

(a) A license to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organization having its headquarters in a country referred to in paragraph (1), upon an application made to the competent authority of that country by the said organization, provided that all of the following conditions are met:

- (i) the translation is made from a copy made and acquired in accordance with the laws of the said country;
- (ii) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;
- (iii) the translation is used exclusively for the purposes referred to in condition (ii) through broadcasts made lawfully and intended for recipients on the territory of the said country, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;
- (iv) all uses made of the translation are without any commercial purpose.

(b) Sound or visual recordings of a translation which was made by a broadcasting organization under a license granted by virtue of this paragraph may, for the purposes and subject to the conditions referred to in subparagraph (a) and with the agreement of that organization, also be used by any other broadcasting organization having its headquarters in the country whose competent authority granted the license in question.

(c) Provided that all of the criteria and conditions set out in subparagraph (a) are met, a license may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation where such fixation was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.

(d) Subject to subparagraphs (a) to (c), the provisions of the preceding paragraphs shall apply to the grant and exercise of any license granted under this paragraph.

### Article III

*[Limitation on the Right of Reproduction: 1. Licenses grantable by competent authority; 2. to 5. Conditions allowing the grant of such licenses; 6. Termination of licenses; 7. Works to which this Article applies]*

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled to substitute for the exclusive right of reproduction provided for in Article 9 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

(2)

(a) If, in relation to a work to which this Article applies by virtue of paragraph (7), after the expiration of

- (i) the relevant period specified in paragraph (3), commencing on the date of first publication of a particular edition of the work, or
- (ii) any longer period determined by national legislation of the country referred to in paragraph (1), commencing on the same date,

copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any national of such country may obtain a license to reproduce and publish such edition at that or a lower price for use in connection with systematic instructional activities.

(b) A license to reproduce and publish an edition which has been distributed as described in subparagraph (a) may also be granted under the conditions provided for in this Article if, after the expiration of the applicable period, no authorized copies of that edition have been on sale for a period of six months in

the country concerned to the general public or in connection with systematic instructional activities at a price reasonably related to that normally charged in the country for comparable works.

- (3) The period referred to in paragraph (2)(a)(i) shall be five years, except that
- (i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;
  - (ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(4)

(a) No license obtainable after three years shall be granted under this Article until a period of six months has elapsed

- (i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or
- (ii) where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.

(b) Where licenses are obtainable after other periods and Article IV(2) is applicable, no license shall be granted until a period of three months has elapsed from the date of the dispatch of the copies of the application.

(c) If, during the period of six or three months referred to in subparagraphs (a) and (b), a distribution as described in paragraph (2)(a) has taken place, no license shall be granted under this Article.

(d) No license shall be granted if the author has withdrawn from circulation all copies of the edition for the reproduction and publication of which the license has been applied for.

(5) A license to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

- (i) where the translation was not published by the owner of the right of translation or with his authorization, or
- (ii) where the translation is not in a language in general use in the country in which the license is applied for.

(6) If copies of an edition of a work are distributed in the country referred to in paragraph (1) to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such edition is in the same language and with substantially the same content as the edition which was published under the said license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7)

(a) Subject to subparagraph (b), the works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.

(b) This Article shall also apply to the reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the country in which the license is applied for, always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connection with systematic instructional activities.

#### Article IV

[Provisions Common to Licenses Under Articles II and III: 1 and 2. Procedure; 3. Indication of author and title of work; 4. Exportation of copies; 5. Notice; 6. Compensation]

(1) A license under Article II or Article III may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the

edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as making the request, the applicant shall inform any national or international information center referred to in paragraph (2).

(2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application, submitted to the authority competent to grant the license, to the publisher whose name appears on the work and to any national or international information center which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business.

(3) The name of the author shall be indicated on all copies of the translation or reproduction published under a license granted under Article II or Article III. The title of the work shall appear on all such copies. In the case of a translation, the original title of the work shall appear in any case on all the said copies.

(4)

(a) No license granted under Article II or Article III shall extend to the export of copies, and any such license shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country in which it has been applied for.

(b) For the purposes of subparagraph (a), the notion of export shall include the sending of copies from any territory to the country which, in respect of that territory, has made a declaration under Article I(5).

(c) Where a governmental or other public entity of a country which has granted a license to make a translation under Article II into a language other than English, French or Spanish sends copies of a translation published under such license to another country, such sending of copies shall not, for the purposes of subparagraph (a), be considered to constitute export if all of the following conditions are met:

- (i) the recipients are individuals who are nationals of the country whose competent authority has granted the license, or organizations grouping such individuals;
- (ii) the copies are to be used only for the purpose of teaching, scholarship or research;
- (iii) the sending of the copies and their subsequent distribution to recipients is without any commercial purpose; and
- (iv) the country to which the copies have been sent has agreed with the country whose competent authority has granted the license to allow the receipt, or distribution, or both, and the Director General has been notified of the agreement by the Government of the country in which the license has been granted.

(5) All copies published under a license granted by virtue of Article II or Article III shall bear a notice in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies.

(6)

(a) Due provision shall be made at the national level to ensure

- (i) that the license provides, in favour of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned, and
- (ii) payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

(b) Due provision shall be made by national legislation to ensure a correct translation of the work, or an accurate reproduction of the particular edition, as the case may be.

## Article V

[*Alternative Possibility for Limitation of the Right of Translation*: 1. Regime provided for under the 1886 and 1896 Acts; 2. No possibility of change to regime under Article II; 3. Time limit for choosing the alternative possibility]

(1)

(a) Any country entitled to make a declaration that it will avail itself of the faculty provided for in Article II may, instead, at the time of ratifying or acceding to this Act:

- (i) if it is a country to which Article 30(2)(a) applies, make a declaration under that provision as far as the right of translation is concerned;
- (ii) if it is a country to which Article 30(2)(a) does not apply, and even if it is not a country outside the Union, make a declaration as provided for in Article 30(2)(b), first sentence.

(b) In the case of a country which ceases to be regarded as a developing country as referred to in Article I(1), a declaration made according to this paragraph shall be effective until the date on which the period applicable under Article I(3) expires.

(c) Any country which has made a declaration according to this paragraph may not subsequently avail itself of the faculty provided for in Article II even if it withdraws the said declaration.

(2) Subject to paragraph (3), any country which has availed itself of the faculty provided for in Article II may not subsequently make a declaration according to paragraph (1).

(3) Any country which has ceased to be regarded as a developing country as referred to in Article I(1) may, not later than two years prior to the expiration of the period applicable under Article I(3), make a declaration to the effect provided for in Article 30(2)(b), first sentence, notwithstanding the fact that it is not a country outside the Union. Such declaration shall take effect at the date on which the period applicable under Article I(3) expires.

## Article VI

*[Possibilities of applying, or admitting the application of, certain provisions of the Appendix before becoming bound by it: 1. Declaration; 2. Depository and effective date of declaration]*

(1) Any country of the Union may declare, as from the date of this Act, and at any time before becoming bound by Articles 1 to 21 and this Appendix:

- (i) if it is a country which, were it bound by Articles 1 to 21 and this Appendix, would be entitled to avail itself of the faculties referred to in Article I(1), that it will apply the provisions of Article II or of Article III or of both to works whose country of origin is a country which, pursuant to (ii) below, admits the application of those Articles to such works, or which is bound by Articles 1 to 21 and this Appendix; such declaration may, instead of referring to Article II, refer to Article V;
- (ii) that it admits the application of this Appendix to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article I.

(2) Any declaration made under paragraph (1) shall be in writing and shall be deposited with the Director General. The declaration shall become effective from the date of its deposit.



## ROME CONVENTION, 1961

### INTERNATIONAL CONVENTION FOR THE PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANISATIONS

Done at Rome on October 26, 1961

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The Contracting States, moved by the desire to protect the rights of performers, producers of phonograms, and broadcasting organisations,

Have agreed as follows:

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\* This Table of Contents is added for the convenience of the reader. It does not appear in the original text of the Convention.

### Article 1

[Safeguard of Copyright Proper\*]

Protection granted under this Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Convention may be interpreted as prejudicing such protection.

### Article 2

[Protection given by the Convention. Definition of National Treatment]

1. For the purposes of this Convention, national treatment shall mean the treatment accorded by the domestic law of the Contracting State in which protection is claimed:

(a) to performers who are its nationals, as regards performances taking place, broadcast, or first fixed, on its territory;

(b) to producers of phonograms who are its nationals, as regards phonograms first fixed or first published on its territory;

(c) to broadcasting organisations which have their headquarters on its territory, as regards broadcasts transmitted from transmitters situated on its territory.

2. National treatment shall be subject to the protection specifically guaranteed, and the limitations specifically provided for, in this Convention.

### Article 3

[Definitions: (a) Performers; (b) Phonogram; (c) Producers of Phonograms; (d) Publication; (e) Reproduction; (f) Broadcasting; (g) Rebroadcasting]

For the purposes of this Convention:

(a) “performers” means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works;

(b) “phonogram” means any exclusively aural fixation of sounds of a performance or of other sounds;

(c) “producer of phonograms” means the person who, or the legal entity which, first fixes the sounds of a performance or other sounds;

(d) “publication” means the offering of copies of a phonogram to the public in reasonable quantity;

(e) “reproduction” means the making of a copy or copies of a fixation;

(f) “broadcasting” means the transmission by wireless means for public reception of sounds or of images and sounds;

(g) “rebroadcasting” means the simultaneous broadcasting by one broadcasting organisation of the broadcast of another broadcasting organisation.

### Article 4

[Performances Protected. Points of Attachment for Performers]

Each Contracting State shall grant national treatment to performers if any of the following conditions is met:

(a) the performance takes place in another Contracting State;

(b) the performance is incorporated in a phonogram which is protected under Article 5 of this Convention;

(c) the performance, not being fixed on a phonogram, is carried by a broadcast which is protected by Article 6 of this Convention.

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\* Articles have been given titles to facilitate their identification. There are no titles in the signed text.

### Article 5

[Protected Phonograms: 1. Points of Attachment for Producers of Phonograms; 2. Simultaneous Publication;  
3. Power to exclude certain Criteria]

1. Each Contracting State shall grant national treatment to producers of phonograms if any of the following conditions is met:

- (a) the producer of the phonogram is a national of another Contracting State (criterion of nationality);
- (b) the first fixation of the sound was made in another Contracting State (criterion of fixation);
- (c) the phonogram was first published in another Contracting State (criterion of publication).

2. If a phonogram was first published in a non-contracting State but if it was also published, within thirty days of its first publication, in a Contracting State (simultaneous publication), it shall be considered as first published in the Contracting State.

3. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may declare that it will not apply the criterion of publication or, alternatively, the criterion of fixation. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

### Article 6

[Protected Broadcasts: 1. Points of Attachment for Broadcasting Organizations; 2. Power to Reserve]

1. Each Contracting State shall grant national treatment to broadcasting organisations if either of the following conditions is met:

- (a) the headquarters of the broadcasting organisation is situated in another Contracting State;
- (b) the broadcast was transmitted from a transmitter situated in another Contracting State.

2. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may declare that it will protect broadcasts only if the headquarters of the broadcasting organisation is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

### Article 7

[Minimum Protection for Performers: 1. Particular Rights; 2. Relations between Performers and Broadcasting Organizations]

1. The protection provided for performers by this Convention shall include the possibility of preventing:

- (a) the broadcasting and the communication to the public, without their consent, of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation;

- (b) the fixation, without their consent, of their unfixated performance;

- (c) the reproduction, without their consent, of a fixation of their performance:

- (i) if the original fixation itself was made without their consent;

- (ii) if the reproduction is made for purposes different from those for which the performers gave their consent;

- (iii) if the original fixation was made in accordance with the provisions of Article 15, and the reproduction is made for purposes different from those referred to in those provisions.

2.

(1) If broadcasting was consented to by the performers, it shall be a matter for the domestic law of the Contracting State where protection is claimed to regulate the protection against rebroadcasting, fixation for broadcasting purposes and the reproduction of such fixation for broadcasting purposes.

(2) The terms and conditions governing the use by broadcasting organisations of fixations made for broadcasting purposes shall be determined in accordance with the domestic law of the Contracting State where protection is claimed.



(3) However, the domestic law referred to in sub-paragraphs (1) and (2) of this paragraph shall not operate to deprive performers of the ability to control, by contract, their relations with broadcasting organisations.

#### **Article 8**

[Performers acting jointly]

Any Contracting State may, by its domestic laws and regulations, specify the manner in which performers will be represented in connection with the exercise of their rights if several of them participate in the same performance.

#### **Article 9**

[Variety and Circus Artists]

Any Contracting State may, by its domestic laws and regulations, extend the protection provided for in this Convention to artists who do not perform literary or artistic works.

#### **Article 10**

[Right of Reproduction for Phonogram Producers]

Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

#### **Article 11**

[Formalities for Phonograms]

If, as a condition of protecting the rights of producers of phonograms, or of performers, or both, in relation to phonograms, a Contracting State, under its domestic law, requires compliance with formalities, these shall be considered as fulfilled if all the copies in commerce of the published phonogram or their containers bear a notice consisting of the symbol (P), accompanied by the year date of the first publication, placed in such a manner as to give reasonable notice of claim of protection; and if the copies or their containers do not identify the producer or the licensee of the producer (by carrying his name, trade mark or other appropriate designation), the notice shall also include the name of the owner of the rights of the producer; and, furthermore, if the copies or their containers do not identify the principal performers, the notice shall also include the name of the person who, in the country in which the fixation was effected, owns the rights of such performers.

#### **Article 12**

[Secondary Uses of Phonograms]

If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the performers, or to the producers of the phonograms, or to both. Domestic law may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration.

#### **Article 13**

[Minimum Rights for Broadcasting Organizations]

Broadcasting organisations shall enjoy the right to authorize or prohibit:

- (a) the rebroadcasting of their broadcasts;
- (b) the fixation of their broadcasts;
- (c) the reproduction:
  - (i) of fixations, made without their consent, of their broadcasts;
  - (ii) of fixations, made in accordance with the provisions of Article 15, of their broadcasts, if the reproduction is made for purposes different from those referred to in those provisions;

(d) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee; it shall be a matter for the domestic law of the State where protection of this right is claimed to determine the conditions under which it may be exercised.

#### Article 14

[Minimum Duration of Protection]

The term of protection to be granted under this Convention shall last at least until the end of a period of twenty years computed from the end of the year in which:

- (a) the fixation was made—for phonograms and for performances incorporated therein;
- (b) the performance took place—for performances not incorporated in phonograms;
- (c) the broadcast took place—for broadcasts.

#### Article 15

[Permitted Exceptions: 1. Specific Limitations; 2. Equivalents with copyright]

1. Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Convention as regards:

- (a) private use;
- (b) use of short excerpts in connection with the reporting of current events;
- (c) ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts;
- (d) use solely for the purposes of teaching or scientific research.

2. Irrespective of paragraph 1 of this Article, any Contracting State may, in its domestic laws and regulations, provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms and broadcasting organisations, as it provides for, in its domestic laws and regulations, in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with this Convention.

#### Article 16

[Reservations]

1. Any State, upon becoming party to this Convention, shall be bound by all the obligations and shall enjoy all the benefits thereof. However, a State may at any time, in a notification deposited with the Secretary-General of the United Nations, declare that:

(a) as regards Article 12:

- (i) it will not apply the provisions of that Article;
- (ii) it will not apply the provisions of that Article in respect of certain uses;
- (iii) as regards phonograms the producer of which is not a national of another Contracting State, it will not apply that Article;
- (iv) as regards phonograms the producer of which is a national of another Contracting State, it will limit the protection provided for by that Article to the extent to which, and to the term for which, the latter State grants protection to phonograms first fixed by a national of the State making the declaration; however, the fact that the Contracting State of which the producer is a national does not grant the protection to the same beneficiary or beneficiaries as the State making the declaration shall not be considered as a difference in the extent of the protection;

(b) as regards Article 13, it will not apply item (d) of that Article; if a Contracting State makes such a declaration, the other Contracting States shall not be obliged to grant the right referred to in Article 13, item (d), to broadcasting organisations whose headquarters are in that State.

2. If the notification referred to in paragraph 1 of this Article is made after the date of the deposit of the instrument of ratification, acceptance or accession, the declaration will become effective six months after it has been deposited.

### **Article 17**

[Certain countries applying only the “fixation” criterion]

Any State which, on October 26, 1961, grants protection to producers of phonograms solely on the basis of the criterion of fixation may, by a notification deposited with the Secretary–General of the United Nations at the time of ratification, acceptance or accession, declare that it will apply, for the purposes of Article 5, the criterion of fixation alone and, for the purposes of paragraph 1(a)(iii) and (iv) of Article 16, the criterion of fixation instead of the criterion of nationality.

### **Article 18**

[Withdrawal of reservations]

Any State which has deposited a notification under paragraph 3 of Article 5, paragraph 2 of Article 6, paragraph 1 of Article 16 or Article 17, may, by a further notification deposited with the Secretary–General of the United Nations, reduce its scope or withdraw it.

### **Article 19**

[Performers’ Rights in Films]

Notwithstanding anything in this Convention, once a performer has consented to the incorporation of his performance in a visual or audio–visual fixation, Article 7 shall have no further application.

### **Article 20**

[Non–retroactivity]

1. This Convention shall not prejudice rights acquired in any Contracting State before the date of coming into force of this Convention for that State.
2. No Contracting State shall be bound to apply the provisions of this Convention to performances or broadcasts which took place, or to phonograms which were fixed, before the date of coming into force of this Convention for that State.

### **Article 21**

[Protection by other means]

The protection provided for in this Convention shall not prejudice any protection otherwise secured to performers, producers of phonograms and broadcasting organisations.

### **Article 22**

[Special agreements]

Contracting States reserve the right to enter into special agreements among themselves in so far as such agreements grant to performers, producers of phonograms or broadcasting organisations more extensive rights than those granted by this Convention or contain other provisions not contrary to this Convention.

### **Article 23**

[Signature and deposit]

This Convention shall be deposited with the Secretary–General of the United Nations. It shall be open until June 30, 1962, for signature by any State invited to the Diplomatic Conference on the International Protection of Performers, Producers of Phonograms and Broadcasting Organisations which is a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works.

### **Article 24**

[Becoming Party to the Convention]

1. This Convention shall be subject to ratification or acceptance by the signatory States.

2. This Convention shall be open for accession by any State invited to the Conference referred to in Article 23, and by any State Member of the United Nations, provided that in either case such State is a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works.

3. Ratification, acceptance or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the United Nations.

#### **Article 25**

[Entry into force]

1. This Convention shall come into force three months after the date of deposit of the sixth instrument of ratification, acceptance or accession.

2. Subsequently, this Convention shall come into force in respect of each State three months after the date of deposit of its instrument of ratification, acceptance or accession.

#### **Article 26**

[Implementation of the Convention by the Provision of Domestic Law]

1. Each Contracting State undertakes to adopt, in accordance with its Constitution, the measures necessary to ensure the application of this Convention.

2. At the time of deposit of its instrument of ratification, acceptance or accession, each State must be in a position under its domestic law to give effect to the terms of this Convention.

#### **Article 27**

[Applicability of the Convention to Certain Territories]

1. Any State may, at the time of ratification, acceptance or accession, or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that this Convention shall extend to all or any of the territories for whose international relations it is responsible, provided that the Universal Copyright Convention or the International Convention for the Protection of Literary and Artistic Works applies to the territory or territories concerned. This notification shall take effect three months after the date of its receipt.

2. The notifications referred to in paragraph 3 of Article 5, paragraph 2 of Article 6, paragraph 1 of Article 16 and Articles 17 and 18, may be extended to cover all or any of the territories referred to in paragraph 1 of this Article.

#### **Article 28**

[Denunciation of the Convention]

1. Any Contracting State may denounce this Convention, on its own behalf or on behalf of all or any of the territories referred to in Article 27.

2. The denunciation shall be effected by a notification addressed to the Secretary-General of the United Nations and shall take effect twelve months after the date of receipt of the notification.

3. The right of denunciation shall not be exercised by a Contracting State before the expiry of a period of five years from the date on which the Convention came into force with respect to that State.

4. A Contracting State shall cease to be a party to this Convention from that time when it is neither a party to the Universal Copyright Convention nor a member of the International Union for the Protection of Literary and Artistic Works.

5. This Convention shall cease to apply to any territory referred to in Article 27 from that time when neither the Universal Copyright Convention nor the International Convention for the Protection of Literary and Artistic Works applies to that territory.

### Article 29

[Revision of the Convention]

1. After this Convention has been in force for five years, any Contracting State may, by notification addressed to the Secretary-General of the United Nations, request that a conference be convened for the purpose of revising the Convention. The Secretary-General shall notify all Contracting States of this request. If, within a period of six months following the date of notification by the Secretary-General of the United Nations, not less than one half of the Contracting States notify him of their concurrence with the request, the Secretary-General shall inform the Director-General of the International Labor Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works, who shall convene a revision conference in co-operation with the Intergovernmental Committee provided for in Article 32.

2. The adoption of any revision of this Convention shall require an affirmative vote by two-thirds of the States attending the revision conference, provided that this majority includes two-thirds of the States which, at the time of the revision conference, are parties to the Convention.

3. In the event of adoption of a Convention revising this Convention in whole or in part, and unless the revising Convention provides otherwise:

(a) this Convention shall cease to be open to ratification, acceptance or accession as from the date of entry into force of the revising Convention;

(b) this Convention shall remain in force as regards relations between or with Contracting States which have not become parties to the revising Convention.

### Article 30

[Settlement of disputes]

Any dispute which may arise between two or more Contracting States concerning the interpretation or application of this Convention and which is not settled by negotiation shall, at the request of any one of the parties to the dispute, be referred to the International Court of Justice for decision, unless they agree to another mode of settlement.

### Article 31

[Limits on Reservations]

Without prejudice to the provisions of paragraph 3 of Article 5, paragraph 2 of Article 6, paragraph 1 of Article 16 and Article 17, no reservation may be made to this Convention.

### Article 32

[Intergovernmental Committee]

1. An Intergovernmental Committee is hereby established with the following duties:

(a) to study questions concerning the application and operation of this Convention; and

(b) to collect proposals and to prepare documentation for possible revision of this Convention.

2. The Committee shall consist of representatives of the Contracting States, chosen with due regard to equitable geographical distribution. The number of members shall be six if there are twelve Contracting States or less, nine if there are thirteen to eighteen Contracting States and twelve if there are more than eighteen Contracting States.

3. The Committee shall be constituted twelve months after the Convention comes into force by an election organized among the Contracting States, each of which shall have one vote, by the Director-General of the International Labor Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works, in accordance with rules previously approved by a majority of all Contracting States.

4. The Committee shall elect its Chairman and officers. It shall establish its own rules of procedure. These rules shall in particular provide for the future operation of the Committee and for a method of

selecting its members for the future in such a way as to ensure rotation among the various Contracting States.

5. Officials of the International Labor Office, the United Nations Educational, Scientific and Cultural Organization and the Bureau of the International Union for the Protection of Literary and Artistic Works, designated by the Directors-General and the Director thereof, shall constitute the Secretariat of the Committee.

6. Meetings of the Committee, which shall be convened whenever a majority of its members deems it necessary, shall be held successively at the headquarters of the International Labor Office, the United Nations Educational, Scientific and Cultural Organization and the Bureau of the International Union for the Protection of Literary and Artistic Works.

7. Expenses of members of the Committee shall be borne by their respective Governments.

### Article 33

[Languages]

1. The present Convention is drawn up in English, French and Spanish, the three texts being equally authentic.

2. In addition, official texts of the present Convention shall be drawn up in German, Italian and Portuguese.

### Article 34

[Notifications]

1. The Secretary-General of the United Nations shall notify the States invited to the Conference referred to in Article 23 and every State Member of the United Nations, as well as the Director-General of the International Labor Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works:

(a) of the deposit of each instrument of ratification, acceptance or accession;

(b) of the date of entry into force of the Convention;

(c) of all notifications, declarations or communications provided for in this Convention;

(d) if any of the situations referred to in paragraphs 4 and 5 of Article 28 arise.

2. The Secretary-General of the United Nations shall also notify the Director-General of the International Labor Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works of the requests communicated to him in accordance with Article 29, as well as of any communication received from the Contracting States concerning the revision of the Convention.

IN FAITH WHEREOF, the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Rome, this twenty-sixth day of October 1961, in a single copy in the English, French and Spanish languages. Certified true copies shall be delivered by the Secretary-General of the United Nations to all the States invited to the Conference referred to in Article 23 and to every State Member of the United Nations, as well as to the Director-General of the International Labor Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works.

**ANNEX 1C**

**AGREEMENT ON TRADE-RELATED ASPECTS OF  
INTELLECTUAL PROPERTY RIGHTS**

- PART I           GENERAL PROVISIONS AND BASIC PRINCIPLES
- PART II           STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF  
INTELLECTUAL PROPERTY RIGHTS
1.     Copyright and Related Rights
  2.     Trademarks
  3.     Geographical Indications
  4.     Industrial Designs
  5.     Patents
  6.     Layout-Designs (Topographies) of Integrated Circuits
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- PART III          ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS
1.     General Obligations
  2.     Civil and Administrative Procedures and Remedies
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- PART IV          ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS  
AND RELATED *INTER-PARTES* PROCEDURES
- PART V           DISPUTE PREVENTION AND SETTLEMENT
- PART VI          TRANSITIONAL ARRANGEMENTS
- PART VII         INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

**AGREEMENT ON TRADE-RELATED ASPECTS OF  
INTELLECTUAL PROPERTY RIGHTS**

*Members,*

*Desiring* to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

*Recognizing*, to this end, the need for new rules and disciplines concerning:

- (a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;
- (b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;
- (c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;
- (d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and
- (e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

*Recognizing* the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

*Recognizing* that intellectual property rights are private rights;

*Recognizing* the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

*Recognizing* also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

*Emphasizing* the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

*Desiring* to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations;

*Hereby agree* as follows:



## PART I

## GENERAL PROVISIONS AND BASIC PRINCIPLES

*Article 1**Nature and Scope of Obligations*

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.

3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members.<sup>1</sup> In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.<sup>2</sup> Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

*Article 2**Intellectual Property Conventions*

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).

2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

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<sup>1</sup>When "nationals" are referred to in this Agreement, they shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

<sup>2</sup>In this Agreement, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property; "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works; "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961. "Treaty on Intellectual Property in Respect of Integrated Circuits" (IPIC Treaty) refers to the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. "WTO Agreement" refers to the Agreement Establishing the WTO.

### *Article 3*

#### *National Treatment*

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection<sup>3</sup> of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

### *Article 4*

#### *Most-Favoured-Nation Treatment*

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

- (a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;
- (b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;
- (c) in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;
- (d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

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<sup>3</sup>For the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.

*Article 5*

*Multilateral Agreements on Acquisition or  
Maintenance of Protection*

The obligations under Articles 3 and 4 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 6*

*Exhaustion*

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

*Article 7*

*Objectives*

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 8*

*Principles*

1. Members may, in formulating or amending their 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 Agreement.
2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, 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.

PART II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE  
AND USE OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: COPYRIGHT AND RELATED RIGHTS

*Article 9*

*Relation to the Berne Convention*

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom.
2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

*Article 10*

*Computer Programs and Compilations of Data*

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).
2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

*Article 11*

*Rental Rights*

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

*Article 12*

*Term of Protection*

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years

from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

### Article 13

#### *Limitations and Exceptions*

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

### Article 14

#### *Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations*

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.
2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.
3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they 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 (1971).
4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.
5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.
6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers and producers of phonograms in phonograms.

## SECTION 2: TRADEMARKS

### *Article 15*

#### *Protectable Subject Matter*

1. Any sign, or any combination of signs, capable of distinguishing the goods or 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 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, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.
2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).
3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.
4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.
5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

### *Article 16*

#### *Rights Conferred*

1. 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 which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.
2. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.
3. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or

services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

#### *Article 17*

##### *Exceptions*

Members 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 18*

##### *Term of Protection*

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

#### *Article 19*

##### *Requirement of Use*

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.
2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

#### *Article 20*

##### *Other Requirements*

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

*Article 21*

*Licensing and Assignment*

Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

SECTION 3: GEOGRAPHICAL INDICATIONS

*Article 22*

*Protection of Geographical Indications*

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, 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. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:
  - (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
  - (b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).
3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.
4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.



### Article 23

#### *Additional Protection for Geographical Indications for Wines and Spirits*

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.<sup>4</sup>

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

### Article 24

#### *International Negotiations; Exceptions*

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

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<sup>4</sup>Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

- (a) before the date of application of these provisions in that Member as defined in Part VI;  
or
- (b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

#### SECTION 4: INDUSTRIAL DESIGNS

##### *Article 25*

##### *Requirements for Protection*

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

2. Each Member 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. Members shall be free to meet this obligation through industrial design law or through copyright law.

#### *Article 26*

##### *Protection*

1. The owner of a protected industrial design shall have 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.

2. Members 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.

3. The duration of protection available shall amount to at least 10 years.

### SECTION 5: PATENTS

#### *Article 27*

##### *Patentable Subject Matter*

1. Subject to the provisions of 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>5</sup> Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, 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. Members may exclude from patentability inventions, the prevention within their 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 their law.

3. Members may also exclude from patentability:

- (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
- (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, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The

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<sup>5</sup>For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms "non-obvious" and "useful" respectively.

provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

#### *Article 28*

##### *Rights Conferred*

1. 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>6</sup> for these purposes that product;
  - (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 29*

##### *Conditions on Patent Applicants*

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.
2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

#### *Article 30*

##### *Exceptions to Rights Conferred*

Members 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.

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<sup>6</sup>This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6.

*Article 31**Other Use Without Authorization of the Right Holder*

Where the law of a Member allows for other use<sup>7</sup> of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

- (a) authorization of such use shall be considered on its individual merits;
- (b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
- (c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;
- (d) such use shall be non-exclusive;
- (e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
- (f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;
- (g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;
- (h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
- (i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;
- (j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

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<sup>7</sup>"Other use" refers to use other than that allowed under Article 30.

- (k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;
- (l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:
  - (i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;
  - (ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and
  - (iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

#### *Article 32*

##### *Revocation/Forfeiture*

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

#### *Article 33*

##### *Term of Protection*

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.<sup>8</sup>

#### *Article 34*

##### *Process Patents: Burden of Proof*

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

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<sup>8</sup>It is understood that those Members which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.

- (a) if the product obtained by the patented process is new;
  - (b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.
2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.
3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

## SECTION 6: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

### *Article 35*

#### *Relation to the IPIC Treaty*

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

### *Article 36*

#### *Scope of the Protection*

Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder:<sup>9</sup> importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

### *Article 37*

#### *Acts Not Requiring the Authorization of the Right Holder*

1. Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum

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<sup>9</sup>The term "right holder" in this Section shall be understood as having the same meaning as the term "holder of the right" in the IPIC Treaty.

equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.

2. The conditions set out in subparagraphs (a) through (k) of Article 31 shall apply *mutatis mutandis* in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

#### Article 38

##### *Term of Protection*

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2, a Member may provide that protection shall lapse 15 years after the creation of the layout-design.

### SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION

#### Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices<sup>10</sup> so long as such information:

- (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) has commercial value because it is secret; and
- (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against

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<sup>10</sup>For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.



unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

## SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

### *Article 40*

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.
2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.
3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.
4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.

## PART III

### ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

#### SECTION 1: GENERAL OBLIGATIONS

##### *Article 41*

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further 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.
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. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.
4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.
5. It is understood that this Part 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 Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

## SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

*Article 42**Fair and Equitable Procedures*

Members shall make available to right holders<sup>11</sup> civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties 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 procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

*Article 43**Evidence*

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

*Article 44**Injunctions*

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against

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<sup>11</sup>For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.

such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

#### *Article 45*

##### *Damages*

1. The judicial authorities shall 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 person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

#### *Article 46*

##### *Other Remedies*

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. 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 release of the goods into the channels of commerce.

#### *Article 47*

##### *Right of Information*

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

*Article 48*

*Indemnification of the Defendant*

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.
2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

*Article 49*

*Administrative Procedures*

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 3: PROVISIONAL MEASURES

*Article 50*

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:
  - (a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;
  - (b) to preserve relevant evidence in regard to the alleged infringement.
2. The judicial authorities shall 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.
3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves 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.
4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a

reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

#### SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES<sup>12</sup>

##### *Article 51*

##### *Suspension of Release by Customs Authorities*

Members shall, in conformity with the provisions set out below, adopt procedures<sup>13</sup> to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods<sup>14</sup> may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members 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 this Section are

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<sup>12</sup>Where a Member has dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

<sup>13</sup>It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

<sup>14</sup>For the purposes of this Agreement:

- (a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;
- (b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which 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 country of importation.

met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

#### *Article 52*

##### *Application*

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

#### *Article 53*

##### *Security or Equivalent Assurance*

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.
2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

#### *Article 54*

##### *Notice of Suspension*

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

*Article 55*

*Duration of Suspension*

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

*Article 56*

*Indemnification of the Importer  
and of the Owner of the Goods*

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

*Article 57*

*Right of Inspection and Information*

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

*Article 58*

*Ex Officio Action*

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:

- (a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;



- (b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article 55;
- (c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

#### *Article 59*

##### *Remedies*

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, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

#### *Article 60*

##### *De Minimis Imports*

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

### SECTION 5: CRIMINAL PROCEDURES

#### *Article 61*

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

## PART IV

### ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED *INTER-PARTES* PROCEDURES

#### *Article 62*

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.
2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.
3. Article 4 of the Paris Convention (1967) shall apply *mutatis mutandis* to service marks.
4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and *inter partes* procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.
5. Final administrative decisions in any of the procedures referred to under paragraph 4 shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

## PART V

### DISPUTE PREVENTION AND SETTLEMENT

#### *Article 63*

##### *Transparency*

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (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 a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.
2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful.

The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6~~ter~~ of the Paris Convention (1967).

3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

4. Nothing in paragraphs 1, 2 and 3 shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

#### *Article 64*

##### *Dispute Settlement*

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.

3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

## PART VI

### TRANSITIONAL ARRANGEMENTS

#### *Article 65*

##### *Transitional Arrangements*

1. Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.

2. A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.

3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.

5. A Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

#### *Article 66*

##### *Least-Developed Country Members*

1. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

#### *Article 67*

##### *Technical Cooperation*

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

## PART VII

## INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

*Article 68**Council for Trade-Related Aspects of  
Intellectual Property Rights*

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

*Article 69**International Cooperation*

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

*Article 70**Protection of Existing Subject Matter*

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.
2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.
3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.
4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were

commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.

5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.

6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

- (a) notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed;
- (b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and
- (c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).

9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

#### *Article 71*

##### *Review and Amendment*

1. The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals

thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

#### *Article 72*

##### *Reservations*

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

#### *Article 73*

##### *Security Exceptions*

Nothing in this Agreement shall be construed:

- (a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests;
  - (i) relating to fissionable materials or the materials from which they are derived;
  - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
  - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

## **Comments by Australia on draft Non-paper (draft 1.0, 8 March 2007) on the WIPO Treaty on the Protection of Broadcasting Organisations**

The following comments are limited to the interpretation, terminology and structure of the draft Treaty and its relationship to other treaties. The comments do not address the policy of the Treaty obligations, on which Australia reserves its position.

### Article 4(3):

We query whether the Treaty can direct contracting parties in regard to their obligations under another treaty. Accordingly we suggest the following rewording of the provision.

Where the Rome Convention provides for an obligation that is more extensive than the obligations of this Treaty, the Treaty does not in any way affect the obligations to each other under that Convention of Contracting Parties who are Contracting States under the Convention.

If this suggestion is not accepted, we suggest that the commas after 'Parties' and 'Convention' be omitted, as their presence could imply that all Contracting Parties are Contracting States of the Rome Convention.

### Article 5(a) and (c)

We query the inclusion of the qualifier 'general' in front of 'public'. There is no such qualifier where 'public' is used in art 5(e) and (f), and we favour omitting that qualifier in art 5(a) and (c).

### Article 5(d)

We query whether the definition could be interpreted as excluding cablecasts in which over-the-air and satellite transmission is used to transport the signal at a stage prior to delivery by cable to the public. We suggest inserting 'for reception by the public' after 'wire' and possibly also after 'satellite'.

### Article 5(f)

We query the inclusion of this definition as the term does not seem to be used in the draft text.

### Article 5

We note that art 2(2) provides that the Treaty is to apply to the protection of cablecasting organisations in respect of their cablecasts. As 'cablecast' is defined in art 5(d), we suggest that there should also be a definition of 'cablecasting organisation' along the lines of the definition of 'broadcasting organisation' in art 5(c).



### Article 7(2)

We are uncertain how this provision would work in the light of art 11. The uncertainty is illustrated by the following example. A Contracting Party ('X') opts to implement the Treaty under art 8(2) and selects one or more of the forms of protection in art 11. If another Contracting Party ('Y') wanted to take advantage of art 7(2) in respect of X, would Y have to mirror the legislative technique(s) selected by X from the range in art 11 in providing for the protection of broadcasters of X, or could Y choose one or more of the other forms of protection listed in art 11, so long as what it chose was 'adequate and effective'?

We suggest replacing 'the other' with 'another'.

### Article 8(2)

We suggest inserting 'granting' after 'instead of'.

We suggest that the 'unauthorised reproduction' must be of a *fixation of* a broadcast: compare art 8(1)(iii). We note that there is an issue whether the protection should be against such reproduction of all fixations or only those that were unauthorised.

### Article 10(iii)

We are not sure if this provision is intended to afford protection against removal of information from broadcasts prior to their reception by the public or in the course of retransmission or after fixation. We think it would be helpful if an indication could be given of what would be covered by 'information relevant for the application of the protection the broadcasting organisations', perhaps in the 'Notes on the draft'. We suggest omission of 'the' in front of 'broadcasting organisations'.

### Article 12(3)

We suggest replacing 'disabled persons' with 'persons with disabilities'.



*Permanent Mission of Brazil in Geneva*

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1216 Cointrin Geneva - Switzerland

Note nº.

The Permanent Mission of Brazil presents its compliments to the World Intellectual Property Organization and has the honor to present, attached herewith, Brazil's preliminary comments on the "Draft Non-Paper on the WIPO Treaty on the Protection of Broadcasting Organizations", of 8 March 2007, circulated for comments by Mr. Jukka Liedes, Chairman of the Standing Committee on Copyright and Related Rights.

2. Brazil reserves the right to present additional comments on the Draft Non-Paper or on revised versions of it.

3. The Permanent Mission of Brazil avails itself of this opportunity to renew to the World Intellectual Property Organization the assurances of its highest consideration.

Geneva, March 28<sup>th</sup>, 2007.

Copyright and Related Rights Sector  
International Bureau  
WORLD INTELLECTUAL PROPERTY ORGANIZATION  
Geneva

## *Brazil's Preliminary Comments*

### PREAMBLE

Three provisions to which Brazil attaches great importance were unduly included in the preamble of the new Chair's Draft Non-Paper. Their legal nature as operative Articles 2, 3 and 4 of the Draft Treaty contained in document SCCR/15/2 is to remain unchanged, as per decision of the WIPO 2006 GA. These three articles address such fundamental issues as General Principles, Protection and Promotion of Cultural Diversity and Defense of Competition. Agreement reached in the SCCR meeting of last January made it clear that these provisions were not to be tampered with. They are essential to secure a fair and adequate balance between the rights of broadcasters and those of the general public. The inclusion of these three provisions in the Chair's Non-Paper is acceptable only in their current form of operative articles.

### ARTICLE 2(2)

Brazil recalls its formal reservation in the SCCR January meeting to any provision likening "cablecasting" to "broadcasting", such as the one in Article 2(2) of the Chair's Draft Non-Paper. The affirmation in Article 2(2) that the treaty "shall apply to the protection of cablecasting organizations (...) in the same way as they apply to broadcasting organizations", requires careful reexamination. Such an article would not be consistent with national legislations that treat "cablecasting" differently from "broadcasting", as is the case of Brazil's.

## ARTICLE 4

Paragraphs 4(2) and 4(3) should be suppressed. Regarding paragraph 4 (1), Brazil proposes improving its language as follows: ***“Protection granted under this Treaty shall leave intact and shall in no way affect, limit or prejudice both the protection of copyright or related rights in the programs incorporated in broadcasts, and the access to the public domain. Consequently, no provision of this Treaty may be interpreted as prejudicing the aforementioned protection and access”***. Furthermore, the following paragraph should be included in article 4: ***“Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under any international treaties addressing copyrights and related rights”***. Those changes would set limits to the application of the treaty, making it clear that the rights created by the treaty will neither encroach on the public domain, nor on copyrights incorporated in the broadcast.

## ARTICLE 5

Brazil also reaffirms its reservation in the SCCR of January with regard to the definition of a “broadcast”, and extends such reservation to the definition of “cablecast”. The consistency of both definitions in Article 5 with national legislations of Members, Brazil’s a case in point, needs to be carefully examined.

## ARTICLE 7

Brazil supports alternative “K”, based on the Berne Convention Model, which best ensures respect for national treatment, and safeguards Broadcasting Organizations against negative discrimination in countries where protection

levels go beyond that of the Broadcasting Treaty. The TRIPS Model, reflected in Alternative “VV”, could also be considered. Alternative “J” would not be acceptable.

## ARTICLE 8

The exclusive rights approach adopted in paragraph 8(1) is not in keeping with the WIPO 2006 GA decision to proceed on the basis of a “signal-based approach”. Therefore, Brazil proposes its deletion.

The following improvement to paragraph 8(2) is proposed: “Contracting Parties may establish adequate and effective legal protection against unauthorized fixation”.

Extending protection to post-fixation (“unauthorized reproduction of their broadcasts”) or to simulcasting (through the formulation “unauthorized retransmission by any means”) would also contravene the decision by the GA on adopting a “signal-based approach”, as well as the agreement of Members to exclude casting over the Internet. This would be detrimental to consensus-building at this late stage in the negotiations.

## ARTICLE 10

This article is inconsistent with a “signal-based approach”. It creates unwarranted obstacles to technological development, to access to legitimate uses, flexibilities and exceptions and to access to the public domain. It does not focus on securing effective protection against an illicit act, but rather creates new exclusive rights so that they cover areas unrelated with the objective of the treaty, such as control by holder of industrial production of

goods, the development and use of encryption technologies, and private uses. The prohibition of mere decryption of encrypted signals, without there having been unauthorized broadcasting activity, is abusive. Brazil does not agree with the inclusion of this Article.

## ARTICLE 11

Article 11 should be replaced by the following text: “Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice”. Article 11, as proposed, is overly broad and might disproportionately impinge upon Member-countries’ latitude for compliance with the Treaty in accordance with their different national regimes and approaches to regulation of broadcasting activities, competition policies, related rights and the public interest. A shorter, straightforward formulation would facilitate consensus. The language proposed is inspired in TRIPS Article 1.1 and leaves member-countries leeway for implementing the treaty according to their legal traditions and practices.

## ARTICLE 12

In paragraph 12 (1), replace the verb “may” by “shall”. This change would promote secure, predictable and harmonious application of “exceptions and limitations” by Member-countries, thereby guaranteeing that the Treaty built-in balance of rights, and exceptions and limitations to rights is fully respected in its national implementation by signatories.

Paragraph 12 (2), which attempts to import the Berne Convention three-step test into the treaty, should be deleted. The three-step test is a rule applicable

in the field of copyright and related rights, and, thus, does not fit in a treaty whose focus is “signal-based”.

Regarding paragraph 12 (3), Brazil proposes adding “uses for library and archives” among the limitations and exceptions. Therefore, the following language is proposed: “In accordance with paragraph 1, Contracting Parties shall provide for limitations and exceptions to the protection provided in this Treaty for such purposes as private use, educational uses, scientific research, uses for the benefit of disabled persons, legal deposit requirements, reporting of current events, use for public security and judicial purposes and uses for library and archives”.

### ARTICLE 13

Article 13 should be deleted. A twenty-year term of protection is unnecessary. The agreed “signal-based” approach to the Treaty implies that the object of protection is the signal, and therefore duration of protection must be linked with the ephemeral life of the signal itself.

### ARTICLE 17

Article 17 should be deleted. Enforcement issues are matters to be left to national jurisdictions.

\* \* \*

March 28, 2007

Dear Colleagues:

Thank you for distributing the draft non-paper of March 8, 2007. The Canadian delegation will be responding to the draft non-paper but we are not able to meet the March 28, 2007 deadline. In particular, we wish to note that we maintain our position on allowing retransmitters to retransmit unencrypted wireless broadcasts within the country of reception without the consent of the broadcaster. This would be done by allowing an opt-out or reservation to the retransmission right. We will be submitting refined wording on this issue (a somewhat amended version of our submission of June 2003). We may also be commenting on other issues. At this time we simply wish to indicate that the fact that we have not made a submission on this issue by the deadline does not mean that we have changed our position.

Yours sincerely,

Bruce Couchman

Department of Industry  
Ottawa, Canada



**Draft Non-paper on the WIPO Treaty on the Protection of  
Broadcasting Organizations  
Draft 1.0 – March 8, 2007  
Comentarios  
Chile**

Junto con agradecer al Presidente del SCCR por el Borrador de documento oficioso sobre un Tratado para la Protección de los Organismos de Radiodifusión, quisiéramos hacer algunos comentarios preeliminarios. Sin perjuicio de lo anterior, nos reservamos la posibilidad de efectuar comentarios adicionales más adelante.

**Defensa de la competencia:**

Chile quisiera que la *variante TT* del artículo 4 del documento SCCR/15/2 Rev. sea reincorporada en el cuerpo del Borrador 1.0. Esta materia está también tratada en cierto modo tanto en el cuerpo del Acuerdo sobre los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio (ADPIC), como en el Convenio de Bruselas sobre la distribución de señales portadoras de programas transmitidas por satélite y se destaca en como uno de los objetivos en el Preámbulo del Borrador 1.0.

**Limitaciones y Excepciones:**

Chile quisiera que al artículo 12(3) del Borrador 1.0 se le agregaran las excepciones relativas a fijaciones efímeras o temporales y los usos por bibliotecas, museos y archivos. Estas excepciones y limitaciones constan en las variantes XX, YY y ZZ del documento SCCR/15/2 Rev.

**Encriptación (TPMs)**

Chile considera que el lenguaje utilizado en el Artículo 10 del Borrador 1.0 es demasiado impreciso y restrictivo, yendo aún más allá de los Tratados de Internet e incluso del documento SCCR/15/2 Rev. Por ejemplo, se incluye la prohibición de fabricar, importar, vender, etc. dispositivos que sirvan para descodificar, lo que va más allá del TODA y del TOIEF e incluso más allá de las legislaciones más desarrolladas, ya que ni siquiera califica el tipo de dispositivos, intencionalidad, etc.

En otro ejemplo, en materia de información sobre la gestión de los derechos (artículo 10(iii) del Borrador 1.0) no se hace ninguna calificación de la intención tal como existe en el TODA y TOIEF (sabiendo o debiendo saber).

Respecto a las medidas tecnológicas de protección (TPMs), hemos señalado que en caso que un eventual tratado incorpore la protección contra la elusión de TPMs, éstas no deberían impedir el ejercicio legítimo de las excepciones y limitaciones a los derechos de autor y derechos conexos, ni impedir el acceso a contenidos que se encuentren en el dominio público.

El hecho de no hacer comentarios sobre los demás puntos del Borrador, no debe entenderse bajo ninguna circunstancia, como que el Gobierno de Chile acepta, apoya o rechaza esos puntos, ni que asume determinadas posiciones sobre ellos.

Dear Michael Keplinger,

Thank you for your email dated March 23,2007.And also thanks for Mr.Jukka Liedes and WIPO Secretariat for their excellent work.

For the Draft Non-Paper,we agree and support for the proposal to establish a narrower and specific protection against signal theft. We believe such kind of approach could gain more acceptance.

We would like to make some suggestions:

Firstly,as to the Article 6, we prefer to add an alternative, remaining a possibility for a Contracting Party, by notification, to set as a condition for protection that the headquarters of the broadcaster and the transmitter be situated in the same country.

Secondly, for Article 10, we prefer to amended item (i)as "decryption of an encrypted broadcast for the purpose of retransmitting the broadcast.

Thirdly, Article 11 is preferred to be deleted.

Lastly, we would like an answer to be given to the following questions about Article 8 (i). Can the wording "by any means" include retransmission by wire, by cable or over computer networks? Under the same item, does the wording "deferred retransssion" could be interpreted as to cover "communication to the public", "transmission following fixation" and "making available to the public"?

Thank you very much

Yours,

-----  
Zhao Xiuling  
Director of Copyright Enforcement Division  
Copyright Department

Bogotá, 29 March, 2007

Mr.  
Michael Keplinger  
Deputy Director General  
Copyright and Related Rights Sector  
World Intellectual Property Organization (WIPO)

REF: Comments from the Government of Colombia to the Draft Non-paper on the WIPO Treaty on the Protection of Broadcasting Organizations

Dear Sir,

In replying to your request of comments from the Member States to the Draft Non-paper prepared by the Chair of the First Special Session of the SCCR, we would appreciate if you could consider the following comments of Colombia in the preparation of the final non-paper to be issued on May 1, 2007.

Colombia considers that the referred Draft Non-paper is a narrow model which deletes some of the exclusive rights described in document SCCR/15/2, keeping the privileges established in the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. Furthermore, it recognizes cablecasting organizations as a new subject of protection. Even though it would be ideal to have a document with a wider scope, we recognize that there are some advances in favor of the broadcasting organizations, i.e. the inclusion of a new subject of protection, an exclusive right to authorize the retransmissions by any means, which includes simulcasting, the recognition of the three steps rule, the commitment for establishing an appropriate and effective legal protection against the non-authorized uses of pre-broadcast signals, the encrypted signals and the removal or alteration of the electronic information relevant for the application of the protection of these organizations.

Finally, Colombia would like to make further analysis of this document and of the comments presented by other countries.

Very truly yours,

MARIA ANDREA ALBAN DURAN  
Director of Multilateral Environmental, Economic and Social Issues  
Ministry of Foreign Affairs  
Republic of Colombia"

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Ma. Andrea Albán  
Directora de Asuntos Económicos, Sociales y  
Ambientales Multilaterales  
Tel: 571 562 8292  
Fax: 571 566 6081





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Permanent Mission of the Arab Republic of Egypt  
 To the United Nations Office & International Organizations in Geneva

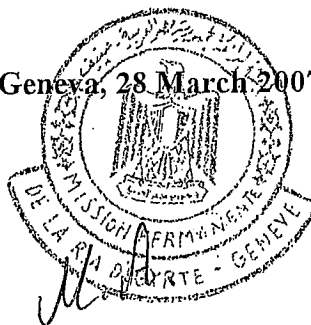
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The Permanent Mission of the Arab Republic of Egypt to the United Nations Office and International Organizations in Geneva presents its compliments to the International Bureau of the World Intellectual Property Organization (WIPO) and has the honor to enclose herewith the drafting suggestions made by the Government of Egypt to the "Draft Non-Paper on the WIPO Treaty on the Protection of Broadcasting Organizations", which was prepared by the Chairman of the Standing Committee on Copyright and Related Rights.

The Permanent Mission of the Arab Republic of Egypt avails itself of this opportunity to renew to the International Bureau of WIPO the assurances of its highest consideration.

Geneva, 28 March 2007



International Bureau of WIPO

- Réponse à signer
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**Draft Non-paper  
on the  
WIPO Treaty on the Protection of Broadcasting Organizations**

*Draft 1.0  
March 8, 2007*

## Introductory Note

1. The work of the special session of the Standing Committee on Copyright and Related Rights (SCCR) from January 17 to 19, 2007, was based on the decision of the General Assembly of the World Intellectual Property Organization (WIPO) in its thirty-third session in 2006, which stated that:

*“the sessions of the SCCR should aim to agree and finalize, on a signal-based approach, the objectives, specific scope and object of protection with a view to submitting to the Diplomatic Conference a revised basic proposal, which will amend the agreed relevant parts of the Revised Draft Basic Proposal (document SCCR/15/2). The Diplomatic Conference will be convened if such agreement is achieved.”*

2. The Committee requested the Chair to prepare a new non-paper. To facilitate this process, the Chair, through the e-mail address <copyright.mail@wipo.int>, will invite the Coordinators of the Regional Groups, Member States, and the European Community, to submit their comments for developing the non-paper before its finalization. The focus of the non-paper will be on the provisions that are relevant in the light of the objectives, specific scope and object of protection of the treaty being under preparation. The new non-paper should be distributed by May 1, 2007.

## Notes on the Draft

3. This draft non-paper has been prepared by the Chair maintaining the structure of document SCCR/15/2, and respecting both the proposals made earlier by Governments and groups of Governments, but at the same time recognizing the positions differing from these proposals, expressed later in the debates in the SCCR.

4. The draft non-paper endeavors to lend full recognition to the “signal-based” approach, and to the focus determined by the General Assembly and the SCCR.

5. What is now presented is a narrow model. It accommodates both those countries granting and wanting to grant (exclusive) rights to the beneficiaries of protection, and those that want to establish a narrower and specific protection against signal theft. If Member States so wish, a provision may be added allowing for optional wider protection, notably of post-fixation rights, which would enable international protection, linked to the flexible clause on national treatment and reciprocity regarding optional rights.

6. The following elaboration and drafting has the objective to achieve broader acceptance and to fulfill the focus set by the General Assembly and the SCCR:

- the signal-based approach covers the whole instrument through the definition of “broadcast”;
- the object of protection, [the] “broadcast,” is explicitly defined as the program-carrying signal; the denomination of that object, the “broadcast”, is maintained in this non-paper to secure coherence with the TRIPS Agreement and the Rome Convention; however, the terminology may still be reconsidered;
- the main objective against signal theft is determined in the new Article 1;
- the object of protection and the scope of application are determined in detail in new Articles 2 and 3;
- the Rome safeguards have been further developed;
- definitions are tailored for the more precise and narrow scope of application;
- the scope of protection is narrow;

**Comment [s1]:** Comment: The term “broadcast” is not synonym to the “program-carrying signal”. Broadcasting is to transmit materials/programs by carrying signal to make them available to the public. The text must make a clear distinction between the terms “Broadcast” and “signal”.



- the treaty provides for minimum norms only (providing more protection than the treaty requires is allowed);
- the number of rights and protection clauses, and the amount of text, is reduced;
- an effective minimum is defined in the rights and protection clauses.

7. As there is no obligation to provide exclusive rights and as there is no obligation to provide any protection concerning post-fixation uses (except reproduction), it is far more clear that the implementation of the Treaty would in no instance affect public interest, access to information, consumer interests or technology innovation.

8. In this light, and in order to maintain the public interest safeguards contained in Articles 2 to 4 in document SCCR/15/2, these principles have been moved to the preamble, and adapted to fit the reduced text.

9. Provisions on limitations and exceptions are still maintained in the draft. With the reduced scope of the Treaty, perhaps even some of these provisions would become superfluous.

10. This model would allow conclusion of a treaty that could gain broad acceptance because it would leave room for the different approaches to rights and protections.

#### **Round of Comments of this Draft Non-Paper**

11. The deadline for comments on this draft is March 28, 2007. The draft exists only in English.

12. The non-paper will be finalized after the round of comments.

13. The "final" non-paper for the second special session of the SCCR will be issued in all working languages of WIPO on May 1, 2007.

*WIPO Treaty on the Protection of Broadcasting Organizations*

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*Preamble*

*The Contracting Parties,*

*Desiring* to develop and maintain the protection of the rights of broadcasting organizations in a manner as effective as possible,

**Comment [s2]:**  
 Comment: To insert the following addition:  
 'On their broadcasting signals'

*Recognizing* the need to update international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

*Recognizing* the profound impact of the development and convergence of information and communication technologies which have given rise to increasing possibilities and opportunities for unauthorized use of broadcasts both within and across borders,

*Recognizing* the need to maintain a balance between the rights of broadcasting organizations and the interests of the general public and *noting* that nothing in this Treaty shall limit the freedom of a Contracting Party to promote access to knowledge and information and national educational and scientific objectives, to curb anti-competitive practices or to take any action it deems necessary to promote the public interest in sectors of vital importance to its socio-economic, scientific and technological development,

**Comment [s3]:**  
 Comment: ON THEIR SIGNALS

*Emphasizing* that this Treaty shall neither limit nor constrain the freedom of a Contracting Party to protect and promote cultural diversity; the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions provides a framework for those who are parties to it,

*Acknowledging* that Contracting Parties may take appropriate measures, when applying this Treaty and specifying in their legislation licensing practices or conditions, to prevent the abuse of the protection granted under this Treaty or the recourse to practices which unreasonably restrain trade or adversely affect the international transfer of technology,

*Recognizing* the objective to establish an international system of protection of broadcasting organizations without compromising the rights of holders of copyright and related rights in works and other protected subject matter carried by broadcasts, as well as the need for broadcasting organizations to acknowledge these rights,

**Comment [s4]:**  
 Comment: ON THEIR SIGNALS

*Stressing* the benefits to authors, performers and producers of phonograms of effective protection against illegal use of broadcasts,

*Have agreed as follows:*



## GENERAL PROVISIONS

### Article 1 *Objective*

The objective of this Treaty is to provide adequate and effective legal protection for broadcasting organizations against unauthorized use of their **broadcasts**.

**Comment [s5]:**  
Comment: BROADCASTED SIGNALS

### Article 2 *Object of Protection*

(1) The provisions of this Treaty shall apply to the protection of broadcasting organizations in respect of their **broadcasts**.

**Comment [s6]:**  
Comment: BROADCASTED SIGNALS

(2) The provisions of this Treaty shall apply to the protection of cablecasting organizations in respect of their cablecasts in the same way as they apply to broadcasting organizations and broadcasts.

(3) The provisions of this Treaty do not give rise to any rights in the programs that are transmitted by broadcasting organizations.

### Article 3 *Scope of Application*

The provisions of this Treaty shall not provide any protection in respect of

- (i) mere retransmissions;
- (ii) any transmissions where the time of the transmission and the place of its reception may be individually chosen by members of the public (on-demand transmissions); or
- (iii) any transmissions over computer networks (transmissions using the Internet Protocol, "webcasting", or "streaming").

**Comment [s7]:**  
Comment: To add:  
IV: Any transmission which consists in violation to other's copyright.

### Article 4 *Relation to Other Conventions and Treaties*

(1) Protection granted under this Treaty shall leave intact and shall in no way affect, limit or prejudice the protection of copyright or related rights in the programs incorporated in broadcasts. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.

(2) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961 (hereinafter the Rome Convention).

(3) Contracting Parties, who are Contracting States of the Rome Convention, will apply the provisions of the Rome Convention between themselves when that Convention provides for an obligation which is more extensive than the obligations of this Treaty.

Article 5  
*Definitions*

For the purposes of this Treaty:

- (a) "broadcast" means signal transmitting by wireless means and carrying assembled and scheduled programs for the reception by the general public;  
 - such signals transmitted by satellite are also "broadcasts";  
 - such signals are also "broadcasts" when encrypted, if the means for decrypting are provided to the public by the broadcasting organization or with its consent;
- (b) "program" means live or recorded material consisting of images, sounds or both;
- (c) "broadcasting organization" means the legal entity that takes the initiative and has the responsibility for the transmission of a broadcast for the reception by the general public;
- (d) "cablecast" means the same as "broadcast" but transmitted by wire and excluding transmission by satellite;
- (e) "retransmission" means the simultaneous transmission for the reception by the public by any means of a broadcast by any other person than the original broadcasting organization; simultaneous transmission of a retransmission shall be understood as well to be a retransmission;
- (f) "communication to the public" means making the programs perceptible to the public;
- (g) "fixation" means the embodiment of a broadcast on a physical support from which the programs carried by the broadcast can be perceived, reproduced or communicated through a device.

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Article 6  
*Beneficiaries of Protection*

- (1) Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations that are nationals of other Contracting Parties.
- (2) Nationals of other Contracting Parties shall be understood to be those broadcasting organizations that meet one of the following conditions:
- (i) the headquarters of the broadcasting organization is situated in another Contracting Party, or
- (ii) the broadcasts are transmitted from a transmitter situated in another Contracting Party. In the case of satellite broadcasts, the relevant place shall be the point at which, under the control and responsibility of the broadcasting organization, the program-carrying signals intended for direct reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

Article 7  
*National Treatment*

*Alternative J ("WPPT Model")*

(1) Each Contracting Party shall accord to nationals of other Contracting Parties the treatment it accords to its own nationals with regard to the rights specifically granted and the protection provided for in this Treaty.

*Alternative K ("Berne Model")*

(1) Each Contracting Party shall accord to nationals of other Contracting Parties the rights that their respective laws do now or may hereafter grant to their nationals, in respect of broadcasts for which such nationals are protected under this Treaty, as well as the rights specifically granted and the protection provided for in this Treaty.

*Alternative VV ("TRIPS Model")*

(1) Each Contracting Party shall accord to the national broadcasting organizations of other Contracting Parties treatment no less favorable than it accords to its own broadcasting organizations in respect of the application of the rights and the protection recognized expressly under this Treaty.

(2) Each Contracting Party may choose to apply the obligation provided for in paragraph (1) only to the extent that the other Contracting Party applies Articles 8(2), 9 and 10 of this Treaty. If a Contracting Party avails itself of the possibility provided for in this paragraph, the Contracting Party shall notify this application to the Director General of the World Intellectual Property Organization (hereinafter WIPO).

## SUBSTANTIVE PROVISIONS

### Article 8

#### *Protection of Broadcasts*

- (1) Broadcasting organizations shall enjoy the exclusive right of authorizing:
- (i) the simultaneous or deferred retransmission of their broadcasts by any means;
  - (ii) the fixation of their broadcasts; and
  - (iii) the direct or indirect reproduction, in any manner or form, of fixations of their broadcasts.
- (2) Contracting Parties may, instead of the exclusive rights of authorizing provided for in paragraph (1), establish adequate and effective legal protection for the broadcasting organizations against unauthorized retransmission by any means, against unauthorized fixation, and against unauthorized reproduction of their broadcasts.

### Article 9

#### *Protection of the Pre-broadcast Signal*

Broadcasting organizations shall enjoy adequate and effective legal protection against any acts referred to in Articles 8 and 10 of this Treaty in relation to their signals prior to broadcasting.

### Article 10

#### *Protection of Encryption and Information Relevant for Protection*

Contracting Parties shall provide adequate and effective legal protection against unauthorized

- (i) decryption of an encrypted broadcast;
- (ii) manufacture, importation, sale or any other act that makes available a device or system capable of decrypting an encrypted broadcast; and
- (iii) removal or alteration of any electronic information relevant for the application of the protection of the broadcasting organizations.

### Article 11

#### *Means of Implementation of the Protection*

The means by which Contracting Parties shall provide adequate and effective protection under the provisions of Article 8(2), 9 and 10 shall be a matter of the legislation of each Contracting Party, and shall include one or more of the following:

- (i) protection by means of the grant of a copyright or other specific right, such as a right related to copyright;
- (ii) protection by means of the law relating to unfair competition, or misappropriation;
- (iii) protection by means of a right of prohibition, or of providing for a prohibition, or of adequate measures to prevent unauthorized acts;
- (iv) protection by means of penal sanctions.



Article 12  
*Limitations and Exceptions*

- (1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works, and the protection of related rights.
- (2) Contracting Parties shall confine any limitations of or exceptions to the protection provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.
- (3) Subject to the provisions in paragraph 2, and in accordance with paragraph 1, Contracting Parties may provide for limitations and exceptions to the protection provided in this Treaty for such purposes as private use, educational uses, scientific research, uses for the benefit of disabled persons, legal deposit requirements, reporting of current events, and use for public security and judicial purposes.

Article 13  
*Term of Protection*

The term of protection to be granted to broadcasting organizations under this Treaty shall last, at least, until the end of a period of 20 years computed from the end of the year in which the broadcast took place.

Article 14  
*Formalities*

The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.

Article 15  
*Reservations*

No reservations to this Treaty shall be permitted.

Article 16  
*Application in Time*

- (1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights and the protection of broadcasting organizations provided for in this Treaty.
- (2) The protection provided for in this Treaty shall be without prejudice to any acts committed, agreements concluded or rights acquired before the entry into force of this Treaty for each Contracting Party.

Article 17  
*Provisions on Enforcement of Rights*

- (1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.
- (2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights or violation of any protection covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

**ADMINISTRATIVE AND FINAL CLAUSES**

Unchanged (SCCR/15/2):

- Article 18 – Assembly
- Article 19 – International Bureau
- Article 20 – Eligibility for Becoming Party to the Treaty
- Article 21 – Rights and Obligations Under the Treaty
- Article 22 – Signature of the Treaty
- Article 23 – Entry into Force of the Treaty
- Article 24 – Effective Date of Becoming Party to the Treaty
- Article 25 – Denunciation of the Treaty
- Article 26 – Languages of the Treaty
- Article 27 – Depositary

[End of non-paper]

## **DRAFT**

Submission from the European Community and its Member States  
on the draft non-paper on the WIPO Treaty on the Protection of Broadcasting Organizations  
from 8 March, 2007

The European Community and its Member States would like to thank the Chair for having prepared and circulated for comments a draft non-paper on the WIPO Treaty on the protection of Broadcasting organisations. We acknowledge the considerable effort which has gone in to the preparation of this new document which will provide a very useful contribution to the discussions. Although the European Community and its Member States remain convinced that a rights-based Treaty is the best way forward, and therefore reconfirm the submissions already made in 2001 (SCCR 6/2) and 2003 (SCCR 9/12), we would like to submit the following comments on the draft non-paper. In the light of further discussions in the SCCR, we do not exclude the possibility of adapting or adding to our submission.

### **Preamble**

We would suggest the removal of paragraphs 4, 5 and 6 of the Preamble. Should such preambular language be maintained, it would appear indispensable that the model of Article 8 TRIPS is followed. This would entail adding a sub-phrase that all measures allowed in the preambular language must be consistent with the provisions of the proposed treaty.

### **Article 1**

This article, aimed at specifying the overarching objectives of the entire treaty, should cover all the provisions in this Treaty, including the grant of exclusive rights. It would seem that the phrase "adequate and effective legal protection" has been given a precise meaning in Articles 8(2) and 11 of the proposed treaty. In these circumstances, the identical term should not be utilised to describe the overarching goal of a treaty that also includes Article 8(1), which foresees the grant of exclusive rights.

### **Article 3**

With respect to Article 3(i), we would seek clarification as to the notion of a "mere" retransmission. Should this text, e.g., reflect the comparable provision of Article 6(3) of EU Directive 92/100, according to which a cable distributor shall not have exclusive right of fixation if it "merely" retransmits by cable the broadcast of broadcasting organisations, it should then be understood that mere retransmission denotes an "unaltered and simultaneous" retransmission by a party other than the original broadcaster. This issue should be clarified. In addition, the exclusionary provision of Article 3(iii) appears overly broad. We believe that the parenthesis added in Article 3(iii) excludes from the scope of application of the proposed treaty, a variety of transmission modes, such as DSL and IPTV, which go beyond the stated aim of excluding web-, or simulcasting. While web-originated broadcasting (streaming on the publicly accessible World Wide Web) was separated from the current treaty negotiations, this would not apply to a broadcasting organisation using an Internet protocol, such as the ones mentioned above, for the purposes of reaching their audience. The parenthesis, if maintained at all, should be limited to "webcasting".

**Article 4 – Relation to Other Conventions and Treaties**

The WIPO guide to the Rome Convention – first published in 1981 – contains the following clarification on Article 22 of the Rome Convention: “in speaking of ‘conventions among themselves’ [in fact Article 22 Rome Convention speaks of “special agreements”] Article 22 deals only with special arrangements limited to countries party to the Rome Convention. The Conventions of 1971 [Brussels] and 1974 [Phonograms] are of a universal nature and do not therefore find their justification in Article 22 but rely rather on Article 21.”

This statement implies that multilateral Conventions that are not limited to countries that are part of the Rome Convention would not fall under Article 22 of the Rome Convention but under its Article 21. In that case, it would be sufficient to reiterate that the Rome Convention would not prejudice other sources of protection for the beneficiaries of the Rome Convention.

The relationship between the proposed draft treaty and the Rome Convention needs therefore to be clarified. Should the proposed treaty be deemed a universal instrument, it would then not be a special agreement within the scope of Article 22 Rome Convention but "another source of protection" within the scope of Article 21 of the Rome Convention.

In that case, it appears self-evident that parties to the Rome Convention would continue to apply all of the provisions of this Convention among themselves, irrespective of the provisions contained in the proposed treaty. In these circumstances it might be redundant to opine on the relationship of the protection granted in the proposed treaty and that granted in the Rome Convention – both instruments would coexist alongside each other. In these circumstances, Article 4(3) should be redrafted to reflect this mutual independence in an unambiguous manner.

**Article 5 – Definitions**

The term "broadcast" is not defined in the Rome Convention. This Convention contains a definition of broadcasting as the transmission by wireless means for public reception of sounds or of images and sounds (Article 3(f)). We take it from the definition of Article 3(f) of the Rome Convention that it is taken that what is protected by this Convention is a series of signals constituting the wireless transmissions of sounds, images, or images and sounds; This protects the signals, in their unique arrangement, and the manifestations effected by the signal.

The proposed treaty now introduces a definition of "broadcast" and a definition of a "program". The "broadcast" is now defined as the electronically generated signal transmitted by wireless means and the "program" as the live or recorded material consisting of image, sound or of images and sounds.

Since the new definition may cause confusion as to the exact object of protection, we invite the Chair to develop a definition of "program" and "broadcast" which would clarify the exact protection intended.

In view of the mention of "simultaneous" and "deferred" retransmissions in Article 8 and the potential confusion in meaning (see comment to Art 8) it would seem necessary to introduce a new definition of "retransmission" in paragraph e).

## **Article 7 – National Treatment**

We oppose the inclusion of Alternative K and support alternative J.

## **Article 8 – Protection of Broadcasts**

We note that Article 8 sets out limited exclusive rights of retransmission, deferred transmission, fixation and direct or indirect reproduction. The 2<sup>nd</sup> paragraph of this Article introduces the flexibility of offering Contracting Parties an alternative form of protection that does not involve the grant of exclusive rights. The EC and its Member States would like to reiterate that a Treaty based on exclusive rights is the most appropriate and enforceable international framework for protection.

This Article, as currently formulated, raises a series of issues:

Firstly, Article 8(1)(i) appears to conflate the notions of retransmission and deferred transmission previously contained in Articles 9 and 14 of SCCR 15/2. The use of the term "retransmission" now also covers "deferred" transmissions of a fixed broadcast.

We note that, at this stage, international treaties in the area of copyright and related rights define re-broadcasting as a retransmission that is simultaneous to the original broadcast and undertaken by a third party (cf. Article 3(g) Rome Convention: "re-broadcasting means the simultaneous broadcasting by one broadcasting organisation of the broadcast of another broadcasting organisation"). Deferred transmissions are characterised as new transmissions, never as rebroadcasts or retransmissions.

In these circumstances, two drafting options appear available:

1. The notion of "retransmission" would comprise simultaneous and deferred transmissions of a broadcast or a fixation thereof by any other person than the original broadcasting organisation. This would require a new definition of "retransmission" in Article 5(e);
2. The notions of retransmission and deferred transmission would remain distinct. This would require a distinct mention of a right of transmission following fixation either in Article 8(1)(i) or, as part of the provision on "fixation" in Article 8(1)(ii).

Secondly, Article 8(2) provides for the possibility to replace the rights enumerated in Article 8(1) with alternative means to provide protection against the acts covered by exclusive rights in Article 8(1). This raises the issue of how broadcasting organisations can effectively battle cross-border infringements. Article 8(2) opens the risk that broadcasting organisations who seek to invoke the protection granted under the proposed treaty would need to enforce their position according to different rules in different jurisdictions. The harmonising effect of a single remedy available in all jurisdictions would be lost.

In these circumstances, we would like clarification on how Article 8(2) would work in relation to Article 11 and how the patchwork of solutions that the latter article allows would still guarantee that the proposed treaty provides for adequate and effective protection against the acts otherwise covered by the exclusive right in Article 8(1).

## **Article 10 – Protection of Encryption and Information Relevant for Protection**

The notion of encryption is narrower than "technological protection measures". We query whether this notion is sufficiently open to incorporate other technologies used to protect the programme carrying signal and to future technological developments.

#### **Article 12 – Limitations and Exceptions**

We are of the opinion that paragraph 3 should be deleted since paragraphs 1 and 2 would seem to provide for a sufficient balance of interests between broadcasting organisations and the general public. Moreover, since paragraph 3 introduces a non-exhaustive list of exceptions, we feel that this could be too wide and tend towards an imbalance of interests. We would also like clarification of why "legal deposit requirements" have been introduced and what exactly they refer to.

#### **Article 16 – Application in Time**

We would like to know how this Article is to be understood if a contracting state opts for the approach set out in Article 8(2) and does not therefore provide for exclusive rights.

#### **Article 17 – Provisions on Enforcement of Rights**

Could the Chair explain who the beneficiary of the enforcement mechanism is in the event that the broadcasting organisation does not have the individual standing to sue? We would be further interested to know how this provision could be applied in practice if a contracting party chooses to avail himself of the approach set out in Article 8(2).

**GOVERNMENT OF INDIA**

**Specific Amendments and comments to the Articles in the Non-Paper**

**Mis en forme :** Gauche : 72 pt,  
Droite : 72 pt, Haut : 90 pt, Bas :  
90 pt, Largeur : 792 pt, Hauteur :  
612 pt

<b><u>Articles</u></b>	<b><u>Comments</u></b>
<p style="text-align: center;"><u>Preamble</u></p> <p><u><i>The Contracting Parties,</i></u></p> <p><u><i>Desiring to develop and maintain the protection of broadcasting organizations in a manner as effective as possible,</i></u></p> <p><u><i>Recognizing the need to update international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,</i></u></p> <p><u><i>Recognizing the profound impact of the development and convergence of information and communication technologies which have given rise to increasing possibilities and opportunities for unauthorized use of broadcasts both within and across borders,</i></u></p> <p><u><i>Recognizing the need to maintain a balance between the protection of broadcasting organizations and the interests of the general public and noting that nothing in this Treaty shall limit the freedom of a Contracting Party to promote access to knowledge and information and national educational and scientific objectives, to curb anti-competitive practices or to take any action it deems necessary to promote the public interest in sectors of vital importance to its socio-economic, scientific and technological development,</i></u></p>	<p><u>Treaty is for the “protection” of broadcasting organizations</u></p>           <p><u>Treaty is for the ‘protection’ of broadcasting organizations</u></p>

<p><u>Emphasizing that this Treaty shall neither limit nor constrain the freedom of a Contracting Party to protect and promote cultural diversity; the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions provides a framework for those who are parties to it,</u></p> <p><u>Acknowledging that Contracting Parties may take appropriate measures, when applying this Treaty and specifying in their legislation licensing practices or conditions, to prevent the abuse of the protection granted under this Treaty or the recourse to practices which unreasonably restrain trade or adversely affect the international transfer of technology,</u></p> <p><u>Recognizing the objective to establish an international system of protection of broadcasting organizations without compromising the rights of holders of copyright and related rights in works and other protected subject matter carried by broadcasts, as well as the need for broadcasting organizations to acknowledge these rights,</u></p> <p><u>Stressing the benefits to authors, performers and producers of phonograms of effective protection against illegal use of broadcasts,</u></p> <p><u>Have agreed as follows:</u></p>	
<p style="text-align: center;"><u>Article 1</u> <u>Objective</u></p> <p><u>The objective of this Treaty is to provide adequate and effective legal protection for broadcasting organizations against unauthorized use of their broadcasts.</u></p>	<p><u>According to signal based approach</u></p>
<p style="text-align: center;"><u>Article 2</u> <u>Object of Protection</u></p>	



<p><u>(1) The provisions of this Treaty shall apply to the protection of broadcasting organizations in respect of their broadcasts.</u></p> <p><u>(2) The provisions of this Treaty shall apply to the protection of cablecasting organizations in respect of their cablecasts in the same way as they apply to broadcasting organizations and broadcasts.</u></p> <p><u>(3) The provisions of this Treaty do not give rise to any rights in the programs that are broadcast by broadcasting organizations.</u></p> <p><u>(4) The provisions of this treaty do not afford protection to any broadcast or cablecast that contains any program for which the broadcasting organization has no authorization from the copy right or related right holder.</u></p>	<p><u>The objective of protection under Article 1 is “broadcast”. The definition of broadcast in Article 5(a) cover only “assembled and scheduled program” and not program per se. The protection is proposed to be limited to the extent of rights acquired or owned by the broadcasting organizations</u></p>
<p style="text-align: center;"><u>Article 3</u> <u>Scope of Application</u></p> <p><u>The provisions of this Treaty shall provide protection to the broadcasting organizations for their broadcasts on the traditional broadcasting and cable-casting media to enable them to enjoy the rights to the extent owned or acquired by them from the owners of copyrights or related rights but shall not provide any protection in respect of</u></p> <p><u>(i) mere retransmissions;</u></p> <p><u>(ii) any transmissions where the time of the transmission and the place of its reception may be individually chosen by members of the public (on-demand transmissions); or</u></p> <p><u>(iii) any transmissions, including any retransmissions of a broadcast or a cablecast, over computer networks (transmissions or retransmissions using the Internet Protocol, “webcasting”, or “net-casting”).</u></p>	<p><u>It appears from the explanation given in the brackets that the intention of this clause is to exclude only transmission that originates from the computer network. It is not clear whether this clause will also cover the transmission (simultaneous or deferred) of broadcast or cablecast over the computer network though the word “any” is used in the beginning. To make it clear that the transmission of broadcast or cablecast over the computer network is also outside the scope of this treaty the change is suggested. This is needed since there is no express exclusion of transmission over computer network in the definition of ‘broadcast’ and</u></p>

	<u>'cablecast' in Article 5(a) &amp; (d).</u>
<p style="text-align: center;"><u>Article 4</u> <u>Relation to Other Conventions and Treaties</u></p> <p><u>(1) Protection granted under this Treaty shall leave intact and shall in no way affect, limit or prejudice the exclusive rights or protection of copyright or related rights in the programs incorporated in broadcasts enjoyed by such rights holders. Consequently, no provision of this Treaty shall be interpreted as prejudicing such rights or protection.</u></p> <p><u>(2) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961 (hereinafter the Rome Convention).</u></p> <p><u>(3) Contracting Parties, who are Contracting States of the Rome Convention, will apply the provisions of the Rome Convention between themselves when that Convention provides for an obligation which is more extensive than the obligations of this Treaty.</u></p>	<p><u>Just to clarify the position already stated that the protection shall be afforded to the extent necessary to enjoy the rights acquired or owned by the broadcasting organizations without impinging on the rights of the original rights holders.</u></p>
<p style="text-align: center;"><u>Article 5</u> <u>Definitions</u></p> <p><u>For the purposes of this Treaty:</u></p> <p><u>(a) "broadcast" means the transmission of a set of electronically generated signals by wireless means and carrying a specifically assembled and scheduled program for the reception by the general public;</u></p> <p><u>- transmission of such a set of signals by satellite is also "broadcast";</u></p> <p><u>- transmission of such a set of signals is also "broadcast" when encrypted, if the</u></p>	<p><u>To make the definition of 'broadcast' consistent with the signal based approach mandated by the General Assembly. Also to exclude the transmission or retransmission over computer networks.</u></p>

means for decrypting are provided to the public by the broadcasting organization or with its consent;

- 'broadcast' shall not be understood as including transmission of such a set of signals over the computer networks.

(b) "program" means a discreet package of one or more works protected by copyright or related rights, in the form of live or recorded material consisting of images, sounds or both;

(c) "broadcasting organization" means the legal entity that takes the initiative and has the responsibility for the broadcast for the reception by the general public;

(d) "cablecast" means the same as "broadcast" when the transmission is by wire and excluding transmission by satellite or over computer networks;

(e) "rebroadcast" means the simultaneous transmission for the reception by the public of a broadcast or a cablecast by any other person than the original broadcasting organization; simultaneous transmission of a rebroadcast shall be understood as well to be a rebroadcast ;

(f)

(g) "fixation" means the embodiment of a broadcast on a physical support from which the programs carried by the broadcast can be perceived, reproduced or communicated through a device.

Since the General Assembly mandate is for traditional broadcasting media, the term retransmission is considered ambiguous, hence the use of 'rebroadcast'

Communication to the public is not a prohibited activity in Article 8. Hence no need for this definition.

<p style="text-align: center;"><u>Article 6</u> <u>Beneficiaries of Protection</u></p> <p><u>(1) Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations that are nationals of other Contracting Parties.</u></p> <p><u>(2) Nationals of other Contracting Parties shall be understood to be those broadcasting organizations that meet the following conditions:</u></p> <p><u>(i) the headquarters of the broadcasting organization is situated in another Contracting Party, and</u></p> <p><u>(ii) the broadcasts are transmitted from a transmitter situated in another Contracting Party. In the case of satellite broadcasts, the relevant place shall be the point at which, under the control and responsibility of the broadcasting organization, the broadcast intended for direct reception by the public is introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.</u></p>	<p><u>Both conditions need to be satisfied to be treated as a national of another contracting party.</u></p> <p><u>The object of protection is broadcast and that is defined to include signals carrying ‘assembled and scheduled program’</u></p>
<p style="text-align: center;"><u>Article 7</u> <u>National Treatment</u></p> <p><u>Alternative J (“WPPT Model”)</u></p> <p><u>(1) Each Contracting Party shall accord to nationals of other Contracting Parties the treatment it accords to its own nationals with regard to the rights specifically granted and the protection provided for in this Treaty.</u></p> <p><u>Alternative K (“Berne Model”)</u></p> <p><u>(1) Each Contracting Party shall accord to nationals of other Contracting Parties the rights that their respective laws do now or may hereafter grant to their nationals, in respect of broadcasts for which such nationals are protected under this Treaty, as well as the rights specifically granted and the protection provided for in this Treaty.</u></p>	

Alternative VV (“TRIPS Model”)

(1) Each Contracting Party shall accord to the national broadcasting organizations of other Contracting Parties treatment no less favorable than it accords to its own broadcasting organizations in respect of the application of the rights and the protection recognized expressly under this Treaty.

(2) Each Contracting Party may choose to apply the obligation provided for in paragraph (1) only to the extent that the other Contracting Party applies Articles 8(2), 9 and 10 of this Treaty. If a Contracting Party avails itself of the possibility provided for in this paragraph, the Contracting Party shall notify this application to the Director General of the World Intellectual Property Organization (hereinafter WIPO).

Article 8  
Protection of Broadcasts

(1) Broadcasting organizations shall enjoy the exclusive right of authorizing:  
(i) the simultaneous or deferred rebroadcast of their broadcasts ;  
(ii) the fixation of their broadcasts; and  
(iii) the direct or indirect reproduction, in any manner or form, of fixations of their broadcasts.

(2) Contracting Parties may, instead of the exclusive rights of authorizing provided for in paragraph (1), establish adequate and effective legal protection for the broadcasting organizations against unauthorized rebroadcast, against unauthorized fixation, and against unauthorized reproduction of their broadcasts subject to such conditions and the extent to which the broadcasting organizations have been so authorized by the owners of the works protected by copyright or related rights transmitted in the broadcasts.

This Article covers three types of activities – retransmission; fixation and reproduction. All these go beyond protecting signals. If the intention of this is to protect the efforts of “assembly and scheduling” of the broadcast the present provision go much beyond this since these acts could affect the rights of content creators and use of public domain materials in the program.  
Sub-clause (2) is narrower than sub-clause (1). But we have the following problems to address:  
(a) Retransmission ‘by any means’ is included. This includes transmission through computer

network also when interpreted along with the definition of broadcast and retransmission in Article 5. It may be noted that transmission through computer network is a separate right of the content creator that could be enjoyed independently. If retransmission is not confined only to the mode for which the broadcasting organization acquired the rights this could affect the enjoyment of the rights by the content creator in the computer network. Hence the need to limit this right only to the modes for which the broadcasting organizations acquired the rights.

(b) Reproduction – the definition of broadcast include ‘program’. Program is defined to include “live or recorded materials”. This includes not only copyright materials but also other protected and public domain materials. Hence this right will have impact not only on the right of reproduction of the author and performer but also on the free use of public domain materials. It is made clear in Article 2 (3) that ‘the provisions of this Treaty do not give rise to any rights in the programs that are transmitted’. This provision will become redundant if reproduction is prohibited without conditions. In this context recognition of legal means to prohibit reproduction may be subjected only to cases where the broadcasting organizations have acquired rights over the program. Hence the need to limit the scope. This will enable to achieve the objective of protecting

	<p><u>the efforts taken to “assemble and schedule” the programs in the broadcast without affecting the rights of the content creators and use of public domain materials in the program.</u></p> <p><u>(c) Fixation – the definition of fixation in Article 5(g) makes it clear that it is fixation of the program in the broadcast. So this has the effect of preventing the free use of public domain materials and the rights of the owners of the content. If the idea is to protect the efforts of “assembly and scheduling” of the program this must be made clear. Only fixation of the program in the form in which it is “assembled and scheduled” alone must be prohibited and not the program per se. This could be prevented in case of protected program if the terms and conditions of the contract with the content owner provide for the same.</u></p>
<p style="text-align: center;"><u>Article 9</u> <u>Protection of the Pre-broadcast Signal</u></p> <p><u>Broadcasting organizations shall enjoy adequate and effective legal protection against any acts referred to in Articles 8 and 10 of this Treaty in relation to the transmission of their signals prior to broadcasting.</u></p>	
<p style="text-align: center;"><u>Article 10</u></p>	

<p style="text-align: center;"><u><i>Protection of Encryption and Information Relevant for Protection</i></u></p> <p><u>Contracting Parties shall provide adequate and effective legal protection against unauthorized</u>  <u>(i) decryption of an encrypted broadcast;</u>  <u>(ii) (iii) removal or alteration of any electronic information relevant for the application of the protection of the broadcasting organizations.</u></p>	<p><u>Sub-clause (ii) has the effect of TPM. This provision is intended to prohibit manufacture, import and sale of technology capable of decrypting an encrypted broadcast. But this has the potential to prevent dual use technology. So there is a need to remove this clause.</u></p>
<p style="text-align: center;"><u>Article 11</u>  <u><i>Means of Implementation of the Protection</i></u></p> <p><u>The means by which Contracting Parties shall provide adequate and effective protection under the provisions of Article 8(2), 9 and 10 shall be a matter of the legislation of each Contracting Party, and shall include one or more of the following:</u></p> <p><u>(i);</u></p> <p><u>(ii) protection by means of the law relating to unfair competition, or misappropriation;</u></p> <p><u>(iii) protection by means of a right of prohibition, or of providing for a prohibition, or of adequate measures to prevent unauthorized acts;</u></p> <p><u>(iv) protection by means of penal sanctions.</u></p>	<p><u>Clause (i) is same as providing exclusive right. Since exclusive right is given as another option under Article 8(1), this clause needs to be removed from this section.</u></p>
<p style="text-align: center;"><u>Article 12</u>  <u><i>Limitations and Exceptions</i></u></p>	



<p><u>(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works, and the protection of related rights.</u></p> <p><u>(2) Contracting Parties shall confine any limitations of or exceptions to the protection provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.</u></p> <p><u>(3) Subject to the provisions in paragraph 2, and in accordance with paragraph 1, Contracting Parties may provide for limitations and exceptions to the protection provided in this Treaty for such purposes as private use, educational uses, scientific research, uses for the benefit of disabled persons, legal deposit requirements, reporting of current events, and use for public security and judicial purposes.</u></p>	
<p style="text-align: center;"><u>Article 13</u> <u>Term of Protection</u></p> <p><u>The term of protection to be granted to broadcasting organizations under this Treaty shall last in accordance with the terms of contract with the owners of content or until the end of a period of 20 years computed from the end of the year in which the broadcast took place, whichever is earlier.</u></p>	<p><u>This is needed only if fixation and reproduction is agreed to be protected. The scope of this provision will be further reduced if these rights are subjected to terms of contract with the owners of content.</u></p>
<p style="text-align: center;"><u>Article 14</u> <u>Formalities</u></p>	

<p><u>The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.</u></p>	
<p><u>Article 15</u> <u>Reservations</u> <u>No reservations to this Treaty shall be permitted.</u></p>	
<p><u>Article 16</u> <u>Application in Time</u> <u>(1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, mutatis mutandis, to the rights and the protection of broadcasting organizations provided for in this Treaty.</u> <u>(2) The protection provided for in this Treaty shall be without prejudice to any acts committed, agreements concluded or rights acquired before the entry into force of this Treaty for each Contracting Party.</u></p>	
<p><u>Article 17</u> <u>Provisions on Enforcement of Rights</u> <u>(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.</u> <u>(2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights or violation of any protection covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.</u></p>	


**Draft Non-paper  
on the  
WIPO Treaty on the Protection of Broadcasting Organizations**

***Draft 1.0  
March 8, 2007***

## Introductory Note

1. The work of the special session of the Standing Committee on Copyright and Related Rights (SCCR) from January 17 to 19, 2007, was based on the decision of the General Assembly of the World Intellectual Property Organization (WIPO) in its thirty-third session in 2006, which stated that:

*“the sessions of the SCCR should aim to agree and finalize, on a signal-based approach, the objectives, specific scope and object of protection with a view to submitting to the Diplomatic Conference a revised basic proposal, which will amend the agreed relevant parts of the Revised Draft Basic Proposal (document SCCR/15/2). The Diplomatic Conference will be convened if such agreement is achieved.”*

2. The Committee requested the Chair to prepare a new non-paper. To facilitate this process, the Chair, through the e-mail address <copyright.mail@wipo.int>, will invite the Coordinators of the Regional Groups, Member States, and the European Community, to submit their comments for developing the non-paper before its finalization. The focus of the non-paper will be on the provisions that are relevant in the light of the objectives, specific scope and object of protection of the treaty being under preparation. The new non-paper should be distributed by May 1, 2007.

## Notes on the Draft

3. This draft non-paper has been prepared by the Chair maintaining the structure of document SCCR/15/2, and respecting both the proposals made earlier by Governments and groups of Governments, but at the same time recognizing the positions differing from these proposals, expressed later in the debates in the SCCR.
4. The draft non-paper endeavors to lend full recognition to the “signal-based” approach, and to the focus determined by the General Assembly and the SCCR.
5. What is now presented is a narrow model. It accommodates both those countries granting and wanting to grant (exclusive) rights to the beneficiaries of protection, and those that want to establish a narrower and specific protection against signal theft. If Member States so wish, a provision may be added allowing for optional wider protection, notably of post-fixation rights, which would enable international protection, linked to the flexible clause on national treatment and reciprocity regarding optional rights.
6. The following elaboration and drafting has the objective to achieve broader acceptance and to fulfill the focus set by the General Assembly and the SCCR:
  - the signal-based approach covers the whole instrument through the definition of “broadcast”;
  - the object of protection, the “broadcast,” is explicitly defined as the program-carrying signal; the denomination of that object, the “broadcast”, is maintained in this non-paper to secure coherence with the TRIPS Agreement and the Rome Convention; however, the terminology may still be reconsidered;
  - the main objective against signal theft is determined in the new Article 1;
  - the object of protection and the scope of application are determined in detail in new Articles 2 and 3;
  - the Rome safeguards have been further developed;
  - definitions are tailored for the more precise and narrow scope of application;
  - the scope of protection is narrow;
  - the treaty provides for minimum norms only (providing more protection than the treaty requires is allowed);
  - the number of rights and protection clauses, and the amount of text, is reduced;
  - an effective minimum is defined in the rights and protection clauses.
7. As there is no obligation to provide exclusive rights and as there is no obligation to provide any protection concerning post-fixation uses (except reproduction), it is far more clear that the implementation of the Treaty would in no instance affect public interest, access to information, consumer interests or technology innovation.
8. In this light, and in order to maintain the public interest safeguards contained in Articles 2 to 4 in document SCCR/15/2, these principles have been moved to the preamble, and adapted to fit the reduced text.
9. Provisions on limitations and exceptions are still maintained in the draft. With the reduced scope of the Treaty, perhaps even some of these provisions would become superfluous.
10. This model would allow conclusion of a treaty that could gain broad acceptance because it would leave room for the different approaches to rights and protections.

**Round of Comments of this Draft Non-Paper**

11. The deadline for comments on this draft is March 28, 2007. The draft exists only in English.
12. The non-paper will be finalized after the round of comments.
13. The “final” non-paper for the second special session of the SCCR will be issued in all working languages of WIPO on May 1, 2007.

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## **Preamble**

*The Contracting Parties,*

*Desiring* to develop and maintain the protection of the rights of broadcasting organizations in a manner as effective as possible,

*Recognizing* the need to update international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

*Recognizing* the profound impact of the development and convergence of information and communication technologies which have given rise to increasing possibilities and opportunities for unauthorized use of broadcasts both within and across borders,

*Recognizing* the need to maintain a balance between the rights of broadcasting organizations and the interests of the general public and *noting* that nothing in this Treaty shall limit the freedom of a Contracting Party to promote access to knowledge and information and national educational and scientific objectives, to curb anti-competitive practices or to take any action it deems necessary to promote the public interest in sectors of vital importance to its socio-economic, scientific and technological development,

*Emphasizing* that this Treaty shall neither limit nor constrain the freedom of a Contracting Party to protect and promote cultural diversity, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions provides a framework for those who are parties to it. )

*Acknowledging* that Contracting Parties may take appropriate measures, when applying this Treaty and specifying in their legislation licensing practices or conditions, to prevent the abuse of the protection granted under this Treaty or the recourse to practices which unreasonably restrain trade or adversely affect the international transfer of technology,

*Recognizing* the objective to establish an international system of protection of broadcasting organizations without compromising the rights of holders of copyright and related rights in works and other protected subject matter carried by broadcasts, as well as the need for broadcasting organizations to acknowledge these rights,

*Stressing* the benefits to authors, performers and producers of phonograms of effective protection against illegal use of broadcasts,

*Have agreed as follows:*

## **GENERAL PROVISIONS**

### Article 1 *Objective*

The objective of this Treaty is to provide adequate and effective legal protection for broadcasting organizations against **unauthorized use of their broadcasts.**

The wording of “unauthorized use of broadcast” will lead toward broader scope of use of broadcasts, which is not the case. Indonesia prefer to be consistent to the aim of the treaty, as mandated by SCCR and General Assembly of the WIPO in its 33d session in 2006, that is to protect the program carrying signal of broadcasting from theft or piracy

( “The work of the special session of the Standing Committee on Copyright and Related Rights (SCCR) from January 17 to 19, 2007, was based on the decision of the General Assembly of the World Intellectual Property Organization (WIPO) in its thirty-third session in 2006, which stated that:

*“the sessions of the SCCR should aim to agree and finalize, on a signal-based approach, the objectives, specific scope and object of protection with a view to submitting to the Diplomatic Conference a revised basic proposal, which will amend the agreed relevant parts of the Revised Draft Basic Proposal (document SCCR/15/2). The Diplomatic Conference will be convened if such agreement is achieved.”*

## Article 2 *Object of Protection*

- (1) The provisions of this Treaty shall apply to the protection of broadcasting organizations in respect of their broadcasts.
- (2) The provisions of this Treaty shall apply to the protection of **cablecasting organizations** in respect of their cablecasts in the same way as they apply to broadcasting organizations and broadcasts.
  - Indonesia prefers to stay with definition of broadcasting organization in a narrow sense, that is traditional broadcasting, as also proposed by some other delegations. The narrower definition of 'broadcasting' has been proposed for consistency with existing treaties in the field of copyright and related right. Thereby we only accept the paragraph 1 and 3 of this article.
- (3) The provisions of this Treaty do not give rise to any rights in the programs that are transmitted by broadcasting organizations.

## Article 3 *Scope of Application*

The provisions of this Treaty shall not provide any protection in respect of

- (i) mere retransmissions;
- (ii) any transmissions where the time of the transmission and the place of its reception may be individually chosen by members of the public (on-demand transmissions); or
- (iii) any transmissions over computer networks (transmissions using the Internet Protocol, “webcasting”, or “netcasting”).

We agreed. - Indonesia

## Article 4 *Relation to Other Conventions and Treaties*

- (1) Protection granted under this Treaty shall leave intact and shall in no way affect, limit or prejudice the protection of copyright or related rights in the programs incorporated in broadcasts. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.
- (2) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961 (hereinafter the Rome Convention).
- (3) Contracting Parties, who are Contracting States of the Rome Convention, will apply the provisions of the Rome Convention between themselves when that Convention provides for an obligation which is more extensive than the obligations of this Treaty.

## Article 5 *Definitions*

For the purposes of this Treaty:

- (a) “broadcast” means an electronically generated signal transmitted by wireless means and carrying assembled and scheduled programs for the reception by the general public;
  - such signals transmitted by satellite are also “broadcasts”;

*To the extent that the broadcast is under the concept of free reception for general public, and in consistency of the phrase (a) and (d)*

- such signals are also “broadcasts” when encrypted, if the means for decrypting are provided to the public by the broadcasting organization or with its consent; *This clause will only open for extension and broader interpretation, suggest to omit*
- (b) “program” means live or recorded material consisting of images, sounds or both;
  - (c) “broadcasting organization” means the legal entity that takes the initiative and has the responsibility for the transmission of a broadcast for the reception by the general public;
  - (d) “cablecast” means the same as “broadcast” but transmitted by wire and excluding transmission by satellite;



- (e) “retransmission” means the simultaneous transmission for the reception by the public by any means of a broadcast by any other person than the original broadcasting organization; simultaneous transmission of a retransmission shall be understood as well to be a retransmission;
- (f) “communication to the public” means making the programs perceptible to the public;
- (g) “fixation” means the embodiment of a broadcast on a physical support from which the programs carried by the broadcast can be perceived, reproduced or communicated through a device.

Article 6  
*Beneficiaries of Protection*

- (1) Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations that are nationals of other Contracting Parties.
- (2) Nationals of other Contracting Parties shall be understood to be those broadcasting organizations that meet one of the following conditions:
  - (i) the headquarters of the broadcasting organization is situated in another Contracting Party, or
  - (ii) the broadcasts are transmitted from a transmitter situated in another Contracting Party. In the case of satellite broadcasts, the relevant place shall be the point at which, under the control and responsibility of the broadcasting organization, the program-carrying signals intended for direct reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

Article 7  
National Treatment

***Alternative J (“WPPT Model”)***

- (1) Each Contracting Party shall accord to nationals of other Contracting Parties the treatment it accords to its own nationals with regard to the rights specifically granted and the protection provided for in this Treaty.

***Alternative K (“Berne Model”)***

- (1) Each Contracting Party shall accord to nationals of other Contracting Parties the rights that their respective laws do now or may hereafter grant to their nationals, in respect of broadcasts for which such nationals are protected under this Treaty, as well as the rights specifically granted and the protection provided for in this Treaty.

***Alternative VV (“TRIPS Model”)***

- (1) Each Contracting Party shall accord to the national broadcasting organizations of other Contracting Parties treatment no less favorable than it accords to its own broadcasting organizations in respect of the application of the rights and the protection recognized expressly under this Treaty.

*Alternative J or V V ( trips Model ) relatively acceptable to my country considering that we have adopted those treaties.*

- (2) Each Contracting Party may choose to apply the obligation provided for in paragraph (1) only to the extent that the other Contracting Party applies Articles 8(2), 9 and 10 of this Treaty. If a Contracting Party avails itself of the possibility provided for in this paragraph, the Contracting Party shall notify this application to the Director General of the World Intellectual Property Organization (hereinafter WIPO).

*We do not quite grasp the above ( para 2 ) scheme of thought. We do not comment until understand the issue*

**SUBSTANTIVE PROVISIONS**

Article 8  
*Protection of Broadcasts*

- (1) Broadcasting organizations shall enjoy the exclusive right of authorizing:
  - (i) the simultaneous or deferred retransmission of their broadcasts by any means;
  - (ii) the fixation of their broadcasts; and
  - (iii) the direct or indirect reproduction, in any manner or form, of fixations of their broadcasts.

- (2) Contracting Parties may, instead of the exclusive rights of authorizing provided for in paragraph (1), establish adequate and effective legal protection for the broadcasting organizations against unauthorized retransmission by any means, against unauthorized fixation, and against unauthorized reproduction of their broadcasts.

To our understanding Article 8 does not address the objective of the treaty as mandated that is signal based approach. These clauses are either extension of or broadening the scope of the agreed objectives

Article 9  
*Protection of the Pre-broadcast Signal*

Broadcasting organizations shall enjoy adequate and effective legal protection against any acts referred to in Articles 8 and 10 of this Treaty in relation to their signals prior to broadcasting.

Article 10  
*Protection of Encryption and Information Relevant for Protection*

Contracting Parties shall provide adequate and effective legal protection against unauthorized

- (i) decryption of an encrypted broadcast;
- (ii) manufacture, importation, sale or any other act that makes available a device or system capable of decrypting an encrypted broadcast; and
- (iii) removal or alteration of any electronic information relevant for the application of the protection of the broadcasting organizations.

Article 11  
*Means of Implementation of the Protection*

The means by which Contracting Parties shall provide adequate and effective protection under the provisions of Article 8(2), 9 and 10 shall be a matter of the legislation of each Contracting Party, and shall include one or more of the following:

- (i) protection by means of the grant of a copyright or other specific right, such as a right related to copyright;
- (ii) protection by means of the law relating to unfair competition, or misappropriation;
- (iii) protection by means of a right of prohibition, or of providing for a prohibition, or of adequate measures to prevent unauthorized acts;
- (iv) protection by means of penal sanctions.

Leave this Article 11 to limitation and exception whereby it will be regulated by national legislation.

Article 12  
*Limitations and Exceptions*

- (1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works, and the protection of related rights.
- (2) Contracting Parties shall confine any limitations of or exceptions to the protection provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.
- (3) Subject to the provisions in paragraph 2, and in accordance with paragraph 1, Contracting Parties may provide for limitations and exceptions to the protection provided in this Treaty for such purposes as private use, educational uses, scientific research, uses for the benefit of disabled persons, legal deposit requirements, reporting of current events, and use for public security and judicial purposes.

Article 13  
*Term of Protection*

The term of protection to be granted to broadcasting organizations under this Treaty shall last, at least, until the end of a period of 20 years computed from the end of the year in which the broadcast took place.

This article will not be relevant anymore, as we adopt the signal based approach, there will be no question of the terms

Article 14  
*Formalities*

The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.

The underlying concept signal based approach – to our comprehension, there is no basis of imitating or adopting copyright principle in this issue.

Article 15  
*Reservations*

No reservations to this Treaty shall be permitted.

The option left is blanket reservation or withdraw from contracting party.?

Article 16  
*Application in Time*

(1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights and the protection of broadcasting organizations provided for in this Treaty.

Again there is no point of returning to right-based approach

(2) The protection provided for in this Treaty shall be without prejudice to any acts committed, agreements concluded or rights acquired before the entry into force of this Treaty for each Contracting Party.

Article 17  
*Provisions on Enforcement of Rights*

(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights or violation of any protection covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

## ADMINISTRATIVE AND FINAL CLAUSES

Unchanged (SCCR/15/2):

Article 18 – Assembly  
Article 19 – International Bureau  
Article 20 – Eligibility for Becoming Party to the Treaty  
Article 21 – Rights and Obligations Under the Treaty  
Article 22 – Signature of the Treaty  
Article 23 – Entry into Force of the Treaty  
Article 24 – Effective Date of Becoming Party to the Treaty  
Article 25 – Denunciation of the Treaty  
Article 26 – Languages of the Treaty  
Article 27 – Depositary

[End of non-paper]



Mission Permanente  
de la République Islamique d'Iran  
auprès des Nations Unies  
et des autres Organisations Internationales à Genève

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

N°346-4/008

The permanent Mission of Islamic Republic of Iran to the United Nations and other International Organizations in Geneva Presents its compliments to the World Intellectual Property Organization and with reference to the Draft Non-Paper on the WIPO Treaty on the protection of Broadcasting Organization (Draft 1.0 March 8,2007)has the honour to communicate to the latter the comments received from Tehran on the aforementioned Draft for necessary consideration.

The Permanent Mission of the Islamic Republic of Iran to the United Nations and other International Organisations in Geneva avails itself of this opportunity to renew to all Permanent Missions the assurances of its highest consideration. *A.A.*

Geneva, 27 March 2007



World Intellectual Property Organization  
34,chemain des Colombettes

1211 GENEVA

Réponse à signer  
par M .....  
Réponse à préparer  
par M .....  
Autre action par  
M .....  
M .....

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جمهوری اسلامی ایران  
وزارت امور خارجه

شماره

تاریخ

شماره

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### Comments of the Islamic Republic of Iran on Draft Non-Paper of the WIPO Treaty on the Proteciron of Broadcasting Organizations

- The Islamic Republic of Iran appreciates the Chairman,s initiative for Preparing the Non-Paper and is of the opinion that some parts of the views of delegations have been considered and some improvements are seen in the text.
- The optional suggestion for some parts of the Draft treaty is welcome but it should be in a manner that cover all parts of the draft as an integrity.
- The alternatives in the relevant Article on National Treatment may neutralize the optional view of the Chair on Rights.
- In the 14<sup>th</sup> session of SCCR as reflected in Document SCCR/14/7 report,Appendix it is decided that the scope of the treaty be limited to the protection of broadcasting organizations and cablecasting organizations (in the traditional sense). It is also decided that the Webcasting and Simulcasting be considered in a separate process, so we suggest that the Article 3 be limited to the protection of broadcasting organizations and be alternated as follows:

“ The Provisions of this treaty shall apply to the protection of the Broadcasting and Cablecasting Organizations in the traditional sense.”

So all references to Computer network like” by any means” or” by any form of manner” should be removed from the draft text.

- The object of protection as reflected in article 1, should be coordinated with the article of 6 of the Document SCCR/15/2. Namely, protection against signal Piracy.
- In the first Special Session of SCCR agreed that the alternative H in the article 7 of the Document SCCR/15/2 be removed from any new text. This issue in another way has been incorporated in articles 3 and 5(d). So it is necessary to be corrected in the new text.
- In article 5(a), Broadcast has been defined as an.....carrying assembled and scheduled program for the reception by the general public. Also in article 9 it is mentioned that pre-broadcast signals should be protected by adequate and effective legal protection against any acts referred to in Articles 8 and 10.

Since the pre-broadcast signals are not assembled or scheduled how it can be eligible to be protected and acquire the same rights?

- The optional nature of exclusive rights and post-fixation rights have been put on the assumption that right-based approach have been agreed by member states.
- The final provisions of the treaty is also very important, So all part of the treaty as an integrity make sense.

The Islamic Republic of Iran supports the conclusion of the treaty on protection of the rights of broadcasting organizations and is of the opinion that with considering the views of all member in the next Special session, the Committee can move toward convening the Diplomatic Conference.

Thank you

**REPUBLIC OF KOREA'S POSITION ON THE DRAFT NON-PAPER**  
**ON**  
**THE WIPO TREATY ON THE PROTECTION OF BROADCASTING ORGANIZATIONS**

■ **General Comments**

Korea suggests that WPPT model be applied to the proposed treaty in general. With regard to the measures to protect broadcast signals, the draft non-paper provides that each member state can choose to protect broadcast signals either by providing the right holders with exclusive rights to authorize or through adopting other effective legal measures. Korea is in the position that it is more desirable to provide exclusive rights to right holders. However, Korea does not intend to oppose the proposed optional approach regarding protection measures.

■ **Comments on Specific Articles**

1. Article 5(f)

The term 'communication to the public' is not used under the substantial provision of this draft. Therefore, Article 5 (f) is not necessary.

2. Article 7(1)

Korea finds *Alternative J* most desirable.

3. Article 8(1)(i)

While Article 5(e) defines 'retransmission' as 'simultaneous transmission', Article 8(1)(i) stipulates 'simultaneous or deferred retransmission' making deferred retransmission to be interpreted as 'deferred simultaneous retransmission'. This is logically unacceptable and Korea suggests that 'simultaneous or deferred transmission' of Article 8(1)(i) be corrected as 'retransmission or deferred transmission'.

Article 7(2), 8, 9 and 10

Article 7(2) provides for reciprocity regarding rights provided under Article 8, 9 and 10. However, Article 9 and 10, unlike Article 8, do not stipulate the possibility for member states to choose to adopt other effective legal measures than providing exclusive rights. It only avails the member states to provide effective legal protection to right holders,

which is not optional. Therefore, Article 7(2) is contrary to logic and Article 9 and 10 should be corrected to follow the format of Article 8 to address this problem.

#### 4. Article 10

‘Any electronic information’ used in Article 10(iii) is not specific enough for the member states to enforce this treaty effectively. Also, providing that ‘any electronic information’ should be protected against removal or alteration is insufficient compared to the protection given to other related right holders. Having said that, Korea is in the position that the WPPT language should be adopted regarding this provision.

#### 5. Article 13

Korea supports the protection term of 50 years for the balance of rights among related right holders.



Dear Michael,

First, I would like to thank the Jukka for his tremendous work of compiling an excellent document that considers all divergent propositions and standpoints.

However, we would like to draw your attention to a few points of concern:

Firstly the fourth alinea of the preamble (Recognizing the need to maintain a balance ...) seems very much unclear. What is understood by "freedom to promote access to knowledge and information"? How can this freedom be reconciled for instance with the obligation of protection of encryption? It seems that the respective alinea of preamble of the WCT (al. 6) is avoiding possible conflicts and should thus be given preference.

Secondly the fifth alinea of the preamble (Emphasizing that this treaty ...) seems unnecessary. The relationship between the Convention on the Protection and Promotion of the Diversity of Cultural Expressions and other treaties is clearly defined in Article 20 of said treaty. Thus there is no need for another Definition in the treaty before us. Moreover the wording of the recital might cause confusion since there is no definition what protection and promotion of cultural diversity means in this context and to what extent it frees parties to the treaty before us from their obligations under this treaty.

Thirdly the sixth alinea of the preamble (Acknowledging that contracting parties ...) seems unnecessarily pejorative. It goes without saying the abuse of rights is not tolerable and courts should not enforce requests that are founded on abused rights. However the introduction of such an uncommon recital in this treaty would be seen as a distinct mistrust of broadcasters and cablecasters and should therefore be removed.

Best Regards

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## **SUBMISSION OF THE UNITED STATES**

The United States is pleased to make this submission on the protection of the rights of broadcasting and cablecasting organizations which includes suggestions for revision, questions and comments. We hope this submission and the forthcoming new (revised) non-paper stimulate further discussion and facilitate achieving a broader agreement on the objectives to be attained in order that the United States can join the consensus of Member States in supporting a Diplomatic Conference to be held in November 2007.

The United States reserves its right to raise additional issues and concerns on this proposed treaty in the future.

### **Draft Non-paper on the WIPO Treaty on the Protection of Broadcasting Organizations**

*Draft 1.0  
March 8, 2007*

## Introductory Note

1. The work of the special session of the Standing Committee on Copyright and Related Rights (SCCR) from January 17 to 19, 2007, was based on the decision of the General Assembly of the World Intellectual Property Organization (WIPO) in its thirty-third session in 2006, which stated that:

*“the sessions of the SCCR should aim to agree and finalize, on a signal-based approach, the objectives, specific scope and object of protection with a view to submitting to the Diplomatic Conference a revised basic proposal, which will amend the agreed relevant parts of the Revised Draft Basic Proposal (document SCCR/15/2). The Diplomatic Conference will be convened if such agreement is achieved.”*

2. The Committee requested the Chair to prepare a new non-paper. To facilitate this process, the Chair, through the e-mail address <copyright.mail@wipo.int>, will invite the Coordinators of the Regional Groups, Member States, and the European Community, to submit their comments for developing the non-paper before its finalization. The focus of the non-paper will be on the provisions that are relevant in the light of the objectives, specific scope and object of protection of the treaty being under preparation. The new non-paper should be distributed by May 1, 2007.

## Notes on the Draft

3. This draft non-paper has been prepared by the Chair maintaining the structure of document SCCR/15/2, and respecting both the proposals made earlier by Governments and groups of Governments, but at the same time recognizing the positions differing from these proposals, expressed later in the debates in the SCCR.

4. The draft non-paper endeavors to lend full recognition to the “signal-based” approach, and to the focus determined by the General Assembly and the SCCR.

5. What is now presented is a narrow model. It accommodates both those countries granting and wanting to grant (exclusive) rights to the beneficiaries of protection, and those that want to establish a narrower and specific protection against signal theft. If Member States so wish, a provision may be added allowing for optional wider protection, notably of post-fixation rights, which would enable international protection, linked to the flexible clause on national treatment and reciprocity regarding optional rights.

6. The following elaboration and drafting has the objective to achieve broader acceptance and to fulfill the focus set by the General Assembly and the SCCR:

- the signal-based approach covers the whole instrument through the definition of “broadcast”;
- the object of protection, the “broadcast,” is explicitly defined as the program-carrying signal; the denomination of that object, the “broadcast”, is maintained in this non-paper to secure coherence with the TRIPS Agreement and the Rome Convention; however, the terminology may still be reconsidered;
- the main objective against signal theft is determined in the new Article 1;
- the object of protection and the scope of application are determined in detail in new Articles 2 and 3;
- the Rome safeguards have been further developed;
- definitions are tailored for the more precise and narrow scope of application;
- the scope of protection is narrow;

- the treaty provides for minimum norms only (providing more protection than the treaty requires is allowed);
- the number of rights and protection clauses, and the amount of text, is reduced;
- an effective minimum is defined in the rights and protection clauses.

7. As there is no obligation to provide exclusive rights and as there is no obligation to provide any protection concerning post-fixation uses (except reproduction), it is far more clear that the implementation of the Treaty would in no instance affect public interest, access to information, consumer interests or technology innovation.

8. In this light, and in order to maintain the public interest safeguards contained in Articles 2 to 4 in document SCCR/15/2, these principles have been moved to the preamble, and adapted to fit the reduced text.

9. Provisions on limitations and exceptions are still maintained in the draft. With the reduced scope of the Treaty, perhaps even some of these provisions would become superfluous.

10. This model would allow conclusion of a treaty that could gain broad acceptance because it would leave room for the different approaches to rights and protections.

#### **Round of Comments of this Draft Non-Paper**

11. The deadline for comments on this draft is March 28, 2007. The draft exists only in English.

12. The non-paper will be finalized after the round of comments.

13. The “final” non-paper for the second special session of the SCCR will be issued in all working languages of WIPO on May 1, 2007.

*WIPO Treaty on the Protection of Broadcasting Organizations*

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*Preamble*

*The Contracting Parties,*

*Desiring* to develop and maintain the protection of the rights of broadcasting organizations in a manner as effective as possible,

*Recognizing* the need to update international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

*Recognizing* the profound impact of the development and convergence of information and communication technologies which have given rise to increasing possibilities and opportunities for unauthorized use of broadcasts both within and across borders,

*Recognizing* the need to maintain a balance between the rights of broadcasting organizations and the interests of the general public and *noting* the value and importance of promoting access to knowledge and information and national educational and scientific objectives, curbing anti-competitive practices and promoting the public interest in sectors of vital importance to its socio-economic, scientific and technological development

*United States Government Comment:* *The United States Government suggests the foregoing change to reflect standard and customary preamble language and ensure consistency within this Treaty.*

Recognizing the importance of cultural diversity and the need to protect and promote cultural diversity,

*United States Government Comment:* *The United States Government suggests the foregoing change to reflect standard and customary preamble language and ensure consistency within this Treaty.*

*Acknowledging* the desirability of preventing the abuse of the protection granted under this Treaty or the recourse to practices which unreasonably restrain trade or adversely affect the international transfer of technology,

*United States Government Comment:* *The United States Government suggests the foregoing change to reflect standard and customary preamble language and ensure consistency within this Treaty.*

*Recognizing* the objective to establish an international system of protection of broadcasting organizations without compromising the rights of holders of copyright and related rights in works and other protected subject matter carried by broadcasts, as well as the right holders' ability to exploit those rights and the need for broadcasting organizations to acknowledge these rights,

*Stressing* the benefits to authors, performers and producers of phonograms of effective protection against illegal use of broadcasts,

**Supprimé :** that nothing in this Treaty shall limit the freedom of a Contracting Party to

**Supprimé :** e

**Supprimé :** to

**Supprimé :** or to

**Supprimé :** taking any action it deems necessary to

**Inséré :** ing

**Supprimé :** e

**Supprimé :** *Emphasizing* that this Treaty shall neither limit nor constrain the freedom of a Contracting Party to protect and promote cultural diversity; the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions provides a framework for those who are parties to it

**Supprimé :** , when applying this Treaty and specifying in, their legislation licensing practices or conditions, to

**Inséré :** ,

Have agreed as follows:

## GENERAL PROVISIONS

Supprimé : ¶

Saut de page

### Article 1

#### *Objective*

The objective of this Treaty is to provide adequate and effective legal protection for broadcasting organizations against unauthorized use of their broadcasts.

### Article 2

#### *Object of Protection*

- (1) The provisions of this Treaty shall apply to the protection of broadcasting organizations in respect of their broadcasts.
- (2) The provisions of this Treaty shall apply to the protection of cablecasting organizations in respect of their cablecasts in the same way as they apply to broadcasting organizations and broadcasts.
- (3) The provisions of this Treaty do not give rise to any rights in the programs that are transmitted by broadcasting organizations.

### Article 3

#### *Scope of Application*

The provisions of this Treaty shall not provide any protection in respect of

- (i) mere retransmissions;
- (ii) any transmissions where the time of the transmission and the place of its reception may be individually chosen by members of the public (on-demand transmissions); or
- (iii) any transmissions over computer networks (transmissions using the Internet Protocol, “webcasting”, or “netcasting”).

*United States Government Comment: The United States believes that Article 3(i) would be more appropriate under Article 6. From our understanding of the Chair’s intent, “mere retransmissions” would receive protection so that one could not transmit a mere retransmission without authorization, but the beneficiary of this protection would be the original broadcasting organization and not the mere retransmitting organization.*

### Article 4

#### *Relation to Other Conventions and Treaties*

- (1) Protection granted under this Treaty shall leave intact and shall in no way affect, limit or prejudice the protection of copyright or related rights in the programs incorporated in broadcasts. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.

(2) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961 (hereinafter the Rome Convention).

(3) Contracting Parties, who are Contracting States of the Rome Convention, will apply the provisions of the Rome Convention between themselves when that Convention provides for an obligation which is more extensive than the obligations of this Treaty.

~~(4) This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.~~

Supprimé :

*United States Government Comment:* The United States Government suggests Article 4 include a non-derogation clause applicable to all treaties to which Contracting Parties belong.

#### Article 5 Definitions

*United States Government Comment:* The United States Government would like to suggest that the definition section be moved closer to the beginning of the document, given that terms used hereunder are referenced in Articles 2 and 3.

For the purposes of this Treaty:

(a) “broadcast” means an electronically generated signal transmitted by wireless means and carrying assembled and scheduled programs for the reception by the public,  
- such signals transmitted by satellite are also “broadcasts”;  
- such signals are also “broadcasts” when encrypted, if the means for decrypting are provided to the public by the broadcasting organization or with its consent;

Supprimé : general

*United States Government Comment:* The United States Government would like to note the importance of ensuring that only broadcasts to the public are protected under the definition of “broadcast” under Article 5(a) and that, therefore, any wireless transmission within a home or personal network is not considered a “broadcast” under this Treaty. We also have a concern about the meaning or affect of the addition of the word “general” before “public.” Does the term “general public” in the second line of Article 5(a) and under Article 5(c) mean something different than “public” in the final line of Article 5(a) or under Article 5(e)? Because of these concerns, we propose deletion of the word “general.” We would also like to confirm that the definition of “public” (and “general public” if this term is maintained) include broadcasts and cablecasts that are made on a point-to-multipoint basis to subscribers.

(b) “program” means live or recorded material consisting of images, sounds or both;

(c) “broadcasting organization” means the legal entity that takes the initiative and has the responsibility ~~or makes arrangements~~ for the transmission of a broadcast for the reception by the public;

Supprimé : general

*United States Government Comment:* The United States Government suggests the additional language to Article 5(c) in order that the Treaty take into account the real business models of broadcasting and cablecasting organizations. Without this language, those organizations



may be inadvertently excluded from the benefits of the protection of this Treaty because of the ways their signals are actually transmitted.

(d) “cablecast” means the same as “broadcast” but transmitted by wire and excluding transmission by satellite;

*United States Government Comment:* The United States Government would like to reiterate its concern about the meaning or affect of the addition of the word “general” before “public” under Article 5(a) in the definition of “broadcast.”

(e) “retransmission” means the simultaneous transmission for the reception by the public by any means of a broadcast by any other person than the original broadcasting organization; simultaneous transmission of a retransmission shall be understood as well to be a retransmission;

*United States Government Comment:* The United States Government notes the importance of ensuring that only retransmissions to the public are covered under the definition of “retransmission” under Article 5(e) and that, therefore, any transmission within a home or personal network is not considered a “retransmission” under this Treaty.

(f) “communication to the public” means making the programs carried by the broadcast perceptible to the public;

*United States Government Comment:* The United States Government believes this Treaty is designed to protect the signal, which is reflected in the definition of “broadcast” under Article 5(a), and not programs, which is the content of the signal and is protected by the WIPO Copyright Treaty or WIPO Performances and Phonograms Treaty, among other treaties.

(g) “fixation” means the initial embodiment of a broadcast [on a physical support] from which the programs carried by the broadcast can be perceived, reproduced or communicated through a device.

*United States Government Comment:* The General Assemblies mandated the Member States “to aim to agree and finalize on a signal-based approach.” Providing broadcast organizations with the exclusive right of fixation goes beyond the Member State agreed mandate of the General Assemblies. For this reason, the United States Government suggests deletion of Article 8(1)(ii) and therefore questions the need for the definition of “fixation” under Article 5(g). If fixations are to be protected under the Treaty, it must be clarified that the only fixations to be protected are the “initial” embodiments made by the broadcasting organization and not all fixations created whenever anyone records a signal in their home.

## Article 6 *Beneficiaries of Protection*

(1) Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations that are nationals of other Contracting Parties.

(2) Nationals of other Contracting Parties shall be understood to be those broadcasting organizations that meet one of the following conditions:

(i) the headquarters of the broadcasting organization is situated in another Contracting Party, or

(ii) the broadcasts are transmitted from a transmitter situated in another Contracting Party. In the case of satellite broadcasts, the relevant place shall be the point at which, under the control and responsibility of the broadcasting organization, the program-carrying signals intended for direct reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

*United States Government Comment: We believe this new international framework should take into account current business practices that have developed between content owners and broadcasters. This Treaty should not affect or override contractual agreements that have been negotiated between content owners and broadcasters. For example, in the United States and perhaps elsewhere, sports industries have developed comprehensive agreements with broadcasters in which the sports league grants the broadcasting organization a right to broadcast its signal in a specific region. In such contracts, the sports league retains all other rights to the broadcasting organization's signal, including the right to license others to transmit and retransmit it on cable, satellite and the Internet as well as the right to fix and reproduce the signal. In addition, such contracts generally provide that the sports leagues, not the broadcasters, have the right to undertake and/or approve of enforcement actions against unauthorized users and uses. It is important to ensure that nothing in this Treaty will override or limit those provisions in existing or future contracts. Consideration should also be given to who should be the proper beneficiary of protection in such cases.*

#### Article 7 National Treatment

##### *Alternative J ("WPPT Model")*

(1) Each Contracting Party shall accord to nationals of other Contracting Parties the treatment it accords to its own nationals with regard to the rights specifically granted and the protection provided for in this Treaty.

##### *Alternative K ("Berne Model")*

(1) Each Contracting Party shall accord to nationals of other Contracting Parties the rights that their respective laws do now or may hereafter grant to their nationals, in respect of broadcasts for which such nationals are protected under this Treaty, as well as the rights specifically granted and the protection provided for in this Treaty.

*United States Government Comment: The United States Government supports Alternative K under Article 7.*

##### *Alternative VV ("TRIPS Model")*

(1) Each Contracting Party shall accord to the national broadcasting organizations of other Contracting Parties treatment no less favorable than it accords to its own broadcasting organizations in respect of the application of the rights and the protection recognized expressly under this Treaty.

**Supprimé :** (2) . Each Contracting Party may choose to apply the obligation provided for in paragraph (1) only to the extent that the other Contracting Party applies Articles 8(2), 9 and 10 of this Treaty. If a Contracting Party avails itself of the possibility provided for in this paragraph, the Contracting Party shall notify this application to the Director General of the World Intellectual Property Organization (hereinafter WIPO).¶

*United States Government Comment: The United States Government is not clear what the need for Article 7(2) is given the options provided under Article 7(1). We are also concerned about potential burdens on a Member State that this Article may create.*

## SUBSTANTIVE PROVISIONS

### Article 8 *Protection of Broadcasts*

- (1) Broadcasting organizations shall enjoy the exclusive right of authorizing the simultaneous or deferred retransmission of their broadcasts by any means.
- (2) Contracting Parties may, instead of the exclusive rights of authorizing provided for in paragraph (1), establish adequate and effective legal protection for the broadcasting organizations against unauthorized retransmission by any means.

**Supprimé :**

**Supprimé :** (i)

**Supprimé :** ¶  
(ii) . the fixation of their broadcasts; and ¶  
(iii) . the direct or indirect reproduction, in any manner or form, of fixations of their broadcasts.

**Supprimé :** . against unauthorized fixation, and against unauthorized reproduction of their broadcasts

*United States Government Comment: The General Assemblies mandated the Member States: “to aim to agree and finalize on a signal-based approach.” Providing broadcast organizations with the exclusive rights of fixation and reproductions would extend beyond the Member State agreed mandate of the General Assemblies. For this reason, the United States Government suggests deletion of Article 8(1)(ii) and Article 8(1)(iii). Retransmissions are already protected under Article 8(1), and we do not see the need to prevent fixations made from authorized receipt of signals, as the harm comes when the fixation is transmitted, which is covered. Providing coverage for fixations and reproductions not only extends beyond the General Assembly’s mandate but also implicates personal uses that take place in the home such as recording a broadcast on videocassette or digital video recording and home copying.*

### Article 9 *Protection of the Pre-broadcast Signal*

Broadcasting organizations shall enjoy adequate and effective legal protection against any acts referred to in Articles 8 and 10 of this Treaty in relation to their signals prior to broadcasting.

### Article 10 *Protection of Encryption and Information Relevant for Protection*

*United States Government Comment: The United States Government supports the protection of technological measures used by broadcasting and cablecasting organizations but believes any such provision included under this Treaty should mimic the technological protection measures provisions from the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.*

**Supprimé :** Contracting Parties shall provide adequate and effective legal protection against unauthorized

**Supprimé :** ¶

**Supprimé :** . (i) . decryption of an encrypted broadcast; ¶  
. (ii) . manufacture, importation, sale or any other act that makes available a device or system capable of decrypting an encrypted broadcast; and ¶  
. (iii) . removal or alteration of any electronic information relevant for the application of the protection of the broadcasting organizations.

### Article 11 *Means of Implementation of the Protection*

The means by which Contracting Parties shall provide adequate and effective protection under the provisions of Article 8(2), 9 and 10 shall be a matter of the legislation of each Contracting Party, and shall include two or more of the following:

- (i) protection by means of the grant of a copyright or other specific right, such as a right related to copyright;

**Supprimé :** one

- (ii) protection by means of the law relating to unfair competition, or misappropriation;
- (iii) protection by means of a right of prohibition, or of providing for a prohibition, or of adequate measures to prevent unauthorized acts;
- (iv) protection by means of penal sanctions.

*United States Government Comment:* Each Member State should include at least one private right of action. This will reduce the government burden and provide the broadcasting/cablecasting organization with a remedy that does not require government action.

## Article 12 Limitations and Exceptions

(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works, and the protection of related rights.

(2) Contracting Parties shall confine any limitations of or exceptions to the protection provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

*United States Government Comment:* The United States Government questions the necessity of Article 12(3) because it would appear that the permissive exceptions expressly set out under Article 12(3) would already be allowed under Articles 12(1) and 12(2). Indeed, Article 12(3) could even be read to limit the applicability of Articles 12(1) and 12(2).

**Supprimé :** (3) . Subject to the provisions in paragraph 2, and in accordance with paragraph 1, Contracting Parties may provide for limitations and exceptions to the protection provided in this Treaty for such purposes as private use, educational uses, scientific research, uses for the benefit of disabled persons, legal deposit requirements, reporting of current events, and use for public security and judicial purposes.

## Article 13 Term of Protection

The term of protection to be granted to broadcasting organizations under this Treaty shall last, at least, until the end of a period of 20 years computed from the end of the year in which the broadcast took place.

*United States Government Comment:* The United States Government questions whether a 20-year term of protection is consistent with a signal-based approach.

*United States Government Comment:* The United States Government suggests deleting this Article. This Article provides a ban on formalities similar to the corresponding provision of the WIPO Performances and Phonograms Treaty, but broadcasts and broadcasting organizations are distinct from sound recordings and sound recording producers. We also note that the Rome Convention contains no such provision prohibiting formalities with respect to broadcasting organizations. In the United States, as in many other countries, our broadcasts and broadcasting organizations are licensed and regulated by the government under our telecommunications law and do have formal requirements, such as applying for licenses and invoking provisions of law regarding retransmission of their signals, that might be construed as formalities that could be forbidden by this Article.

**Supprimé :** Article 14 .  
Formalities¶

¶ . The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.

**Supprimé :** ¶

Article 15  
*Reservations*

No reservations to this Treaty shall be permitted.

Article 16  
*Application in Time*

- (1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights and the protection of broadcasting organizations provided for in this Treaty.
- (2) The protection provided for in this Treaty shall be without prejudice to any acts committed, agreements concluded or rights acquired before the entry into force of this Treaty for each Contracting Party.

Article 17  
*Provisions on Enforcement of Rights*

- (1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.
- (2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights or violation of any protection covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

## ADMINISTRATIVE AND FINAL CLAUSES

Unchanged (SCCR/15/2):

Article 18 – Assembly

Article 19 – International Bureau

Article 20 – Eligibility for Becoming Party to the Treaty

Article 21 – Rights and Obligations Under the Treaty

Article 22 – Signature of the Treaty

Article 23 – Entry into Force of the Treaty

Article 24 – Effective Date of Becoming Party to the Treaty

Article 25 – Denunciation of the Treaty

Article 26 – Languages of the Treaty

Article 27 – Depositary

[End of non-paper]