



Rising.  
Shining.  
Beckoning.

# Copyright Reference Book

PHILIPPINES

**COPYRIGHT REFERENCE BOOK PHILIPPINES**

**INTELLECTUAL PROPERTY OFFICE OF THE PHILIPPINES**

**Bureau of Copyright and Related Rights**

**April, 2021**

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## ABOUT THIS BOOK

This reference book intends to serve as a simple yet comprehensive reference on the copyright legal system in the Philippines. The work is divided into three parts. The first part covers the Philippine Copyright Law as expressed in Republic Act (R.A.) 8293 or the Intellectual Property (IP) Code of the Philippines. Relevant amendments to some provisions of R.A. 8293, specifically those introduced in R.A. 10372, were already incorporated into the main text of the IP Code, for easy reference and convenience. The second part includes various issuances by the Intellectual Property Office of the Philippines (IPOPHL) on copyright and related rights. The third part, meanwhile, includes various international copyright treaties, conventions, and agreements, almost all of which the Philippines has acceded to.

We fervently hope for this book to be one of the many ways to promote and protect copyright and other related rights. We also hope to keep the creative sector informed of the latest and relevant developments in copyright and related rights, here and abroad, so as to get greater participation and involvement from the creatives in registering and protecting their works.

*Bureau of Copyright and Related Rights Staff*

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## THE LAW ON COPYRIGHT

Republic Act (R.A.) 8293 or the Intellectual Property Code of the Philippines was enacted into law on June 6, 1997. The law took effect on the 1st of January, 1998. This part presents the Law on Copyright which is Part IV of the IP Code. Various amendments to RA 8293, specifically those introduced in 2013 under R.A. 10372, have been incorporated into the main text of this work for easy reference.

**PART IV**  
**THE LAW ON COPYRIGHT**  
**CHAPTER I**  
**PRELIMINARY PROVISIONS**

**SEC. 171. Definitions. -**

For the purpose of this Act, the following terms have the following meaning:

171.1. "Author" is the natural person who has created the work;

171.2. A "collective work" is a work which has been created by two (2) or more natural persons at the initiative and under the direction of another with the understanding that it will be disclosed by the latter under his own name and that contributing natural persons will not be identified;

171.3. "Communication to the public" or "communicate to the public" means any communication to the public, including broadcasting, rebroadcasting, retransmitting by cable, broadcasting and retransmitting by satellite, and includes the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them;

171.4. A "computer" is an electronic or similar device having information-processing capabilities, and a "computer program" is a set of instructions expressed in words, codes, schemes or in any other form, which is capable when incorporated in a medium that the computer can read, or causing the computer to perform or achieve a particular task or result;

171.5. "Public lending" is the transfer of possession of the original or a copy of a work or sound recording for a limited period, for non-profit purposes, by an institution the services of which are available to the public, such as public library or archive;

171.6. "Public performance," in the case of a work other than an audiovisual work, is the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process; in the case of an audiovisual work, the showing of its images in sequence and the making of the sounds accompanying it audible; and, in the case of a sound recording, **making** the recorded sounds audible at a place or at places where persons outside the normal circle of a family and that family's closest social acquaintances are or can

be present, irrespective of whether they are or can be present at the same place and at the same time, or at different places and/or at different times, and where the performance can be perceived without the need for communication within the meaning of Subsection 171.3;

171.7. "Published works" means works, which, with the consent of the authors, are made available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them: Provided, that availability of such copies has been such, as to satisfy the reasonable requirements of the public, having regard to the nature of the work;

171.8. "Rental" is the transfer of the possession of the original or a copy of a work or a sound recording for a limited period of time, for profit-making purposes;

171.9. "Reproduction" is the making of one (1) or more copies, temporary or permanent, in whole or in part, of a work or a sound recording in any manner or form without prejudice to the provisions of Section 185 of this Act (Sec. 41 [E], P.D. No. 49a);

171.10. A "work of applied art" is an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

171.11. A "work of the Government of the Philippines" is a work created by an officer or employee of the Philippine Government or any of its subdivisions and instrumentalities, including government-owned or controlled corporations as part of his regularly prescribed official duties.

171.12. "Technological measure" means any technology, device or component that, in the normal course of its operation, restricts acts in respect of a work, performances or sound recording, which are not authorized by the authors, performers or producers of sound recordings concerned or permitted by law;

171.13. "Rights management information" means information which identifies the work, sound recording or performance; the author of the work, producer of the sound recording or performer of the performance, the owner of any right in the work, sound recording or performance; or information about the terms and conditions of the use of the work, sound recording or performance; and any number or code that represent such information, when any of these items is attached to a copy of a work, sound recording or fixation of performance or appears in conjunction with the communication to the public of a work, sound recording or performance;

## CHAPTER II

### ORIGINAL WORKS

#### *SEC. 172. Literary and Artistic Works. –*

172.1 Literary and artistic works, hereinafter referred to as "works", are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular

- (a) Books, pamphlets, articles and other writings;
- (b) Periodicals and newspapers;
- (c) Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;
- (d) Letters;
- (e) Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;
- (f) Musical compositions, with or without words;
- (g) Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;
- (h) Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;
- (i) Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
- (j) Drawings or plastic works of a scientific or technical character;
- (k) Photographic works including works produced by a process analogous to photography; lantern slides;
- (l) Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;
- (m) Pictorial illustrations and advertisements;
- (n) Computer programs; and
- (o) Other literary, scholarly, scientific and artistic works.

172.2. Works are protected by the sole fact of their creation, irrespective of their mode or form of expression, as well as of their content, quality and purpose. (Sec. 2, P.D. No. 49a)

## CHAPTER III

### DERIVATIVE WORKS

#### **SEC. 173. *Derivative Works.* -**

173.1. The following derivative works shall also be protected by copyright:

- (a) Dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; and
- (b) Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents. (Sec. 2, [P] and [Q], P.D. No. 49)

173.2. The works referred to in paragraphs (a) and (b) of Subsection 173.1 shall be protected as a new works: *Provided however*, that such new work shall not affect the force of any subsisting copyright upon the original works employed or any part thereof, or be construed to imply any right to such use of the original works, or to secure or extend copyright in such original works. (Sec. 8, P.D. 49; Art. 10, TRIPS)

#### **SEC. 174. *Published Edition of Work.* -**

In addition to the right to publish granted by the author, his heirs or assigns, the publisher shall have a copy right consisting merely of the right of reproduction of the typographical arrangement of the published edition of the work. (n).

## CHAPTER IV

### WORKS NOT PROTECTED

#### **SEC. 175. *Unprotected Subject Matter.* -**

Notwithstanding the provisions of Section 172 and 173, no protection shall extend, under this law, to any idea, procedure, system method or operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work; news of the day and other miscellaneous facts having the character of mere items of press information; or any official text of a legislative, administrative or legal nature, as well as any official translation thereof. (n)

#### **SEC. 176. *Works of the Government.* -**

176.1. No copyright shall subsist in any work of the Government of the Philippines. However, prior approval of the government agency or office wherein the work is created

shall be necessary for exploitation of such work for profit. Such agency or office may, among other things, impose as a condition the payment of royalties. No prior approval or conditions shall be required for the use of any purpose of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character. (Sec. 9, first par., P.D. No. 49)

176.2. The Author of speeches, lectures, sermons, addresses, and dissertations mentioned in the preceding paragraphs shall have the exclusive right of making a collection of his works. (n)

176.3. Notwithstanding the foregoing provisions, the Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest or otherwise; nor shall publication or republication by the government in a public document of any work in which copy right is subsisting be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such work without the consent of the copyright owners. (Sec. 9, third par., P.D. No. 49)

## CHAPTER V

### COPYRIGHT OR ECONOMIC RIGHTS

#### *SEC. 177. Copy or Economic Rights. -*

Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1. Reproduction of the work or substantial portion of the work;

177.2 Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

177.4. Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental; (n)

177.5. Public display of the original or a copy of the work;

177.6. Public performance of the work; and

177.7. Other communication to the public of the work (Sec. 5, P.D. No. 49a)

## CHAPTER VI

### OWNERSHIP OF COPYRIGHT

#### *SEC. 178. Rules on Copyright Ownership. -*

Copyright ownership shall be governed by the following rules:

178.1. Subject to the provisions of this section, in the case of original literary and artistic works, copyright shall belong to the author of the work;

178.2. In the case of works of joint authorship, the co-authors shall be the original owners of the copyright and in the absence of agreement, their rights shall be governed by the rules on co-ownership. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the copyright in the part that he has created;

178.3. In the case of work created by an author during and in the course of his employment, the copyright shall belong to:

- (a) The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.
- (b) The employer, if the work is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary.

178.4. In the case of a work-commissioned by a person other than an employer of the author and who pays for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary;

178.5. In the case of audiovisual work, the copyright shall belong to the producer, the author of the scenario, the composer of the music, the film director, and the author of the work so adapted. However, subject to contrary or other stipulations among the creators, the producers shall exercise the copyright to an extent required for the exhibition of the work in any manner, except for the right to collect performing license fees for the performance of musical compositions, with or without words, which are incorporated into the work; and

178.6. In respect of letters, the copyright shall belong to the writer subject to the provisions of Article 723 of the Civil Code. (Sec. 6, P.D. No. 49a)

***SEC. 179. Anonymous and Pseudonymous Works. –***

For purposes of this Act, the publishers shall be deemed to represent the authors of articles and other writings published without the names of the authors or under pseudonyms, unless the contrary appears, or the pseudonyms or adopted name leaves no doubts as to the author's identity, or if the author of the anonymous works discloses his identity. (Sec. 7, P.D. 49)

## CHAPTER VII

### TRANSFER, ASSIGNMENT AND LICENSING OF COPYRIGHT

***SEC. 180. Rights of Assignee or Licensee. -***

180.1. The copyright may be assigned or licensed in whole or in part. Within the scope of the assignment or license, the assignee or licensee is entitled to all the rights and remedies which the assignor or licensor had with respect to the copyright.

180.2. The copyright is not deemed assigned or licensed *inter vivos*, in whole or in part, unless there is a written indication of such intention.

180.3. The submission of a literary, photographic or artistic work to a newspaper, magazine or periodical for publication shall constitute only a license to make a single publication unless a greater right is expressly granted. If two (2) or more persons jointly own a copyright or any part thereof, neither of the owners shall be entitled to grant licenses without the prior written consent of the other owner or owners. (Sec. 15, P.D. No. 49a)

180.4. Any exclusivity in the economic rights in a work may be exclusively licensed. Within the scope of the exclusive license, the licensee is entitled to all the rights and remedies which the licensor had with respect to the copyright.

180.5. The copyright owner has the right to regular statements of accounts from the assigned or the licensee with regard to assigned or licensed work.

***SEC. 181. Copyright and Material Object. -***

The copyright is distinct from the property in the material object subject to it. Consequently, the transfer, assignment or licensing of the copyright shall not itself constitute a transfer of the material object. Nor shall a transfer or assignment of the sole copy or of one or several copies of the work imply transfer, assignment or licensing of the copyright. (Sec. 16, P.D. No. 49)

***SEC. 182. Filing of Assignment of License. -***

An assignment or exclusive license may be filed in duplicate with the National Library upon payment of the prescribed fee for registration in books and records kept for the purpose. Upon recording, a copy of the instrument shall be returned to the sender with a notation of the fact of record. Notice of the record shall be published in the IPO Gazette. (Sec. 19, P.D. No. 49a)

***SEC 183. Designation of Society. -***

The owners of copyright and related rights or their heirs may designate a society of artists, writers, composers and other right-holders to collectively manage their economic or moral rights on their behalf. For the said societies to enforce the rights of their members, they shall first secure the necessary accreditation from the Intellectual Property Office (Sec. 32, P.D. No. 49a)

## CHAPTER VIII

### LIMITATIONS ON COPYRIGHT

***SEC. 184. Limitations on Copyright. -***

184.1. Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

- (a) The recitation or performance of a work, once it has been lawfully made accessible to the public, if done privately and free of charge or if made strictly for a charitable or religious institution or society; (Sec. 10(1), P.D. No.49)
- (b) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: *Provided*, That the source and

the name of the author, if appearing on the work, are mentioned; (Sec. 11, third par., P.D. No. 49)

- (c) The reproduction or communication to the public by mass media of articles on current political, social, economic, scientific or religious topic, lectures, addresses and other works of the same nature, which are delivered in public if such use is for information purposes and has not been expressly reserved: *Provided*, That the source is clearly indicated; (Sec. 11, P.D. No. 49)
- (d) The reproduction and communication to the public of literary, scientific or artistic works as part of reports of current events by means of photography, cinematography or broadcasting to the extent necessary for the purpose; (Sec. 12, P.D. No. 49)
- (e) The inclusion of a work in a publication, broadcast, or other communication to the public, sound recording or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair use: *Provided*, that the source and of the name of the author, if appearing in the work, are mentioned;
- (f) The recording made in schools, universities, or educational institutions of a work included in a broadcast for the use of such schools, universities or educational institutions: *Provided*, that such recording must be deleted within a reasonable period after they were first broadcast: *Provided, further*, that such recording may not be made from audiovisual works which are part of the general cinema repertoire of feature films except for brief excerpts of the work;
- (g) The making of ephemeral recordings by a broadcasting organization by means of its own facilities and for use in its own broadcast;
- (h) The use made of a work by or under the direction or control of the Government, by the National Library or by educational, scientific or professional institutions where such use is in the public interest and is compatible with fair use;
- (i) The public performance or the communication to the public of a work, in a place where no admission fee is charged in respect of such public performance or communication, by a club or institution for charitable or educational purpose only, whose aim is not profit making, subject to such other limitations as may be provided in the Regulations;
- (n)
- (j) Public display of the original or a copy of the work not made by means of a film, slide, television image or otherwise on screen or by means of any other device or process: *Provided*, that either the work has been published, or, that original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title; and
- (k) Any use made of a work for the purpose of any judicial proceedings or for the giving of professional advice by a legal practitioner.
- (l) The reproduction or distribution of published articles or materials in a specialized format exclusively for the use of the blind, visually- and reading-impaired persons:

*Provided*, that such copies and distribution shall be made on a nonprofit basis and shall indicate the copyright owner and the date of the original publication.

184.2. The provisions of this section shall be interpreted in such a way as to allow the work to be used in a manner which does not conflict with the normal exploitation of the work and does not unreasonably prejudice the right holder's legitimate interest.

***SEC. 185. Fair Use of a Copyrighted Work. -***

185.1. The fair use of a copyrighted work for criticism, comment, news reporting, teaching including limited number of copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright. Decompilation, which is understood here to be the reproduction of the code and translation of the forms of a computer program to achieve the interoperability of an independently created computer program with other programs may also constitute fair use under the criteria established by this section, to the extent that such decompilation is done for the purpose of obtaining the information necessary to achieve such interoperability. In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include:

- (a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- (b) The nature of the copyrighted work;
- (c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (d) The effect of the use upon the potential market for or value of the copyrighted work.

185.2. The fact that a work is unpublished shall not by itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

***SEC. 186. Work of Architecture. -***

Copyright in a work of architecture shall include the right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognizably derived from the original; *Provided*, That the copyright in any such work shall not include the right to control the reconstruction or rehabilitation in the same style as the original of a building to which the copyright relates. (n)

***SEC. 187. Reproduction of Published Work. -***

187.1. Notwithstanding the provision of Section 177, and subject to the provisions of Subsection 187.2, the private reproduction of a published work in a single copy, where the reproduction is made by a natural person exclusively for research and private study, shall be permitted, without the authorization of the owner of copyright in the work.

187.2. The permission granted under Subsection 187.1 shall not extend to the reproduction of:

- (a) A work of architecture in form of building or other construction;
- (b) An entire book, or a substantial part thereof, or of a musical work in which graphics form by reprographic means;
- (c) A compilation of data and other materials;
- (d) A computer program except as provided in Section 189; and
- (e) Any work in cases where reproduction would unreasonably conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author. (n)

***SEC. 188. Reprographic Reproduction by Libraries. -***

188.1. Notwithstanding the provisions of Subsection 177.1, any library or archive whose activities are not for profit may, without the authorization of the author or copyright owner, make a limited number of copies of the work, as may be necessary for such institutions to fulfill their mandate, by reprographic reproduction:

- (a) Where the work by reason of its fragile character or rarity cannot be lent to user in its original form;
- (b) Where the works are isolated articles contained in composite works or brief portions of other published works and the reproduction is necessary to supply them; when this is considered expedient, to person requesting their loan for purposes of research or study instead of lending the volumes or booklets which contain them; and
- (c) Where the making of such limited copies is in order to preserve and, if necessary, in the event that it is lost, destroyed or rendered unusable, replace a copy, or to replace, in the permanent collection of another similar library or archive, a copy which has been lost, destroyed or rendered unusable and copies are not available with the publisher.

188.2. Notwithstanding the above provisions, it shall not be permissible to produce a volume of a work published in several volumes or to produce missing tomes or pages of magazines or similar works, unless the volume, tome or part is out of stock; *Provided*, That every library which, by law, is entitled to receive copies of a printed work, shall be entitled, when special reasons so require, to reproduce a copy of a published work which is considered necessary for the collection of the library but which is out of stock. (Sec. 13, P.D. 49a)

***SEC. 189. Reproduction of Computer Program. -***

189.1. Notwithstanding the provisions of Section 177, the reproduction in one (1) back-up copy or adaptation of a computer program shall be permitted, without the authorization of the author of, or other owner of copyright in, a computer program, by the lawful owner of that computer program: *Provided*, That the copy or adaptation is necessary for:

- (a) The use of the computer program in conjunction with a computer for the purpose, and to the extent, for which the computer program has been obtained; and
- (b) Archival purposes, and, for the replacement of the lawfully owned copy of the computer program in the event that the lawfully obtained copy of the computer program is lost, destroyed or rendered unusable.

189.2. No copy or adaptation mentioned in this Section shall be used for any purpose other than the ones determined in this Section, and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

189.3. This provision shall be without prejudice to the application of Section 185 whenever appropriate. (n)

***SEC. 190. Importation and Exportation of Infringing Materials. -***

Subject to the approval of the Secretary of Finance, the Commissioner of Customs is hereby empowered to make rules and regulations for preventing the importation or exportation of infringing articles prohibited under Part IV of this Act and under relevant treaties and conventions to which the Philippines may be a party and for seizing and condemning and disposing of the same in case they are discovered after they have been imported or before they are exported. (Sec. 30, P.D. No. 49)

## **CHAPTER IX**

### **DEPOSIT AND NOTICE**

***SEC. 191. Deposit and Notice of Deposit with the National Library and the Supreme Court Library. -***

At any time during the subsistence of the copyright, the owner of the copyright or of any exclusive right in the work may, for the purpose of completing the records of the National Library and the Supreme Court Library, register and deposit with them, by personal delivery or by registered mail, two (2) complete copies or reproductions of the work in such form as the Directors of the said libraries may prescribe in accordance with

regulations: *Provided*, That only works in the field of law shall be deposited with the Supreme Court Library. Such registration and deposit is not a condition of copyright protection.

***SEC. 192. Notice of Copyright. -***

Each copy of a work published or offered for sale may contain a notice bearing the name of the copyright owner, and the year of its first publication, and, in copies produced after the creator's death, the year of such death. (Sec. 27, P.D. No. 49a)

## CHAPTER X

### MORAL RIGHTS

***SEC. 193. Scope of Moral Rights. -***

The author of a work shall, independently of the economic rights in Section 177 or the grant of an assignment or license with respect to such right, have the right:

193.1. To require that the authorship of the works be attributed to him, in particular, the right that his name, as far as practicable, be indicated in a prominent way on the copies, and in connection with the public use of his work;

193.2. To make any alterations of his work prior to, or to withhold it from publication;

193.3. To object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honor or reputation; and

193.4. To restrain the use of his name with respect to any work not of his own creation or in a distorted version of his work. (Sec. 34, P.D. No. 49)

***SEC. 194. Breach of Contract. -***

An author cannot be compelled to perform his contract to create a work or for the publication of his work already in existence. However, he may be held liable for damages for breach of such contract. (Sec. 35, P.D. No. 49)

***SEC. 195. Waiver of Moral Rights. -***

An author may waive his rights mentioned in Section 193 by a written instrument, but no such waiver shall be valid where its effects is to permit another:

195.1. To use the name of the author, or the title of his work, or otherwise to make use of his reputation with respect to any version or adaptation of his work which, because of alterations therein, would substantially tend to injure the literary or artistic reputation of another author; or

195.2. To use the name of the author with respect to a work he did not create. (Sec. 36, P.D. No. 49)

***SEC. 196. Contribution to Collective Work. -***

When an author contributes to a collective work, his right to have his contribution attributed to him is deemed waived unless he expressly reserves it. (Sec. 37, P.D. No. 49)

***SEC. 197. Editing, Arranging and Adaptation of Work. -***

In the absence of a contrary stipulation at the time an author licenses or permits another to use his work, the necessary editing, arranging or adaptation of such work, for publication, broadcast, use in a motion picture, dramatization, or mechanical or electrical reproduction in accordance with the reasonable and customary standards or requirements of the medium in which the work is to be used, shall not be deemed to contravene the author's rights secured by this chapter. Nor shall complete destruction of a work unconditionally transferred by the author be deemed to violate such rights. (Sec. 38, P.D. No. 49)

***SEC. 198. Term of Moral Rights. -***

198.1. The rights of an author under Section 193.1. shall last during the lifetime of the author and in perpetuity after his death while the rights under Sections 193.2. 193.3. and 193.4. shall be coterminous with the economic rights, the moral rights shall not be assignable or subject to license. The person or persons to be charged with the posthumous enforcement of these rights shall be named in a written instrument which shall be filed with the National Library. In default of such person or persons, such enforcement shall devolve upon either the author's heirs, and in default of the heirs, the Director of the National Library.

198.2. For purposes of this Section, "Person" shall mean any individual, partnership, corporation, association, or society. The Director of the National Library may prescribe reasonable fees to be charged for his services in the application of provisions of this Section. (Sec. 39, P.D. No. 49)

***SEC. 199. Enforcement Remedies. -***

Violation of any of the rights conferred by this Chapter shall entitle those charged with their enforcement to the same rights and remedies available to a copyright owner. In addition, damages which may be availed of under the Civil Code may also be recovered.

Any damage recovered after the creator's death shall be held in trust for and remitted to his heirs, and in default of the heirs, shall belong to the government. (Sec. 40, P.D. No. 49)

## CHAPTER XI

### RIGHTS TO PROCEEDS IN SUBSEQUENT TRANSFERS

#### ***SEC. 200. Sale or Lease of Work. -***

In every sale or lease of an original work of painting or sculpture or of the original manuscript of a writer or composer, subsequent to the first disposition thereof by the author, the author or his heirs shall have an inalienable right to participate in the gross proceeds of the sale or lease to the extent of five percent (5%). This right shall exist during the lifetime of the author and for fifty (50) years after his death. (Sec. 31, P.D. No. 49)

#### ***SEC. 201. Works Not Covered. -***

The provisions of this Chapter shall not apply to prints, etchings, engravings, works of applied art, or works of similar kind wherein the author primarily derives gain from the proceeds of reproductions. (Sec. 33, P.D. No. 49)

## CHAPTER XII

### RIGHTS OF PERFORMERS, PRODUCERS OF SOUND RECORDINGS AND BROADCASTING ORGANIZATIONS

#### ***SEC. 202. Definitions. -***

For the purpose of this Act, the following terms shall have the following meanings:

202.1. "Performers" are actors, singers, musicians, dancers, and other persons who act, sing, declaim, play in, interpret, or otherwise perform literary and artistic work;

202.2. "Sound recording" means the fixation of the sounds of a performance or of other sounds, or representation of sound, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

202.3. An "audiovisual work or fixation" is a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible and, where accompanied by sounds, susceptible of being made audible;

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

202.5. "Producer of a sound recording" means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representation of sounds;

202.6. "Publication of a fixed performance or a sound recording" means the offering of copies of the fixed performance or the sound recording to the public, with the consent of the right holder: Provided, that copies are offered to the public in reasonable quality;

202.7. "Broadcasting" means the transmission by wireless means for the public reception of sounds or of images or of representations thereof; such transmission by satellite is also "broadcasting" where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

202.8. "Broadcasting organization" shall include a natural person or a juridical entity duly authorized to engage in broadcasting; and

202.9. "Communication to the public of a performance or a sound recording" means the transmission to the public, by any medium, otherwise than by broadcasting, of sounds of a performance or the representations of sounds fixed in a sound recording. For purposes of Section 209, "communication to the public" includes making the sounds or representations of sounds fixed in a sound recording audible to the public.

***SEC. 203. Scope of Performers' Rights. -***

Subject to the provisions of Section 212, performers shall enjoy the following exclusive rights:

203.1. As regards their performances, the right of authorizing:

- (a) The broadcasting and other communication to the public of their performance;
- and
- (b) The fixation of their unfixed performance.

203.2. The right of authorizing the direct or indirect reproduction of their performances fixed in sound recordings or audiovisual works or fixations in any manner or form;

203.3. Subject to the provisions of Section 206, the right of authorizing the first public distribution of the original and copies of their performance fixed in the sound recordings or

audiovisual works or fixations through sale or rental or other forms of transfer of ownership;

203.4. The right of authorizing the commercial rental to the public of the original and copies of their performances fixed in sound recordings or audiovisual works or fixations, even after distribution of them by, or pursuant to the authorization by the performer; and

203.5. The right of authorizing the making available to the public of their performances fixed in sound recordings or audiovisual works or fixations, by wire or wireless means, in such a way that members of the public may access them from a place and time individually chosen by them. (Sec. 42, P.D. No. 49a)

***SEC. 204. Moral Rights of Performers. -***

204.1. Independently of a performer's economic rights, the performer, shall, as regards his live aural performances or performances fixed in sound recordings or in audiovisual works or fixations, have the right to claim to be identified as the performer of his performances, except where the omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

204.2. The rights granted to a performer in accordance with Subsection 203.1 shall be maintained and exercised fifty (50) years after his death, by his heirs, and in default of heirs, the government, where protection is claimed. (Sec. 43, P.D. no. 49)

***SEC. 205. Limitation on Right. -***

205.1. Subject to the provisions of Section 206, once the performer has authorized the broadcasting or fixation of his performance, the provisions of Sections 203 shall have no further application.

205.2. The provisions of Section 184 and Section 185 shall apply mutatis mutandis to performers. (n)

***SEC. 206. Additional Remuneration for Subsequent Communications or Broadcasts. -***

Unless otherwise provided in the contract, in every communication to the public or broadcast of a performance subsequent to the first communication or broadcast thereof by the broadcasting organization, the performer shall be entitled to an additional remuneration equivalent to at least five percent (5%) of the original compensation he or she received for the first communication or broadcast. (n)

**SEC. 207. Contract Terms. -**

Nothing in this Chapter shall be construed to deprive performers of the right to agree by contracts on terms and conditions more favorable for them in respect of any use of their performance. (n)

**CHAPTER XIII**

**PRODUCERS OF SOUND RECORDINGS**

**SEC. 208. Scope of Right. -**

Subject to the provisions of Section 212, producers of sound recordings shall enjoy the following exclusive rights:

208.1. The right to authorize the direct or indirect reproduction of their sound recordings, in any manner or form; the placing of these reproductions in the market and the right of rental or lending;

208.2. The right to authorize the first public distribution of the original and copies of their sound recordings through sale or rental or other forms of transferring ownership; and

208.3. The right to authorize the commercial rental to the public of the original and copies of their sound recordings, even after distribution by them by or pursuant to authorization by the producer. (Sec. 46, P.D. No. 49a)

208.4. The right to authorize the making available to the public of their sound recordings in such a way that members of the public may access the sound recording from a place and at a time individually chosen or selected by them, as well as other transmissions of a sound recording with like effect.

**SEC. 209. Communication to the Public. -**

If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or for other communication to the public, or is publicly performed with the intention of making and enhancing profit, a single equitable remuneration for the performer or performers, and the producer of the sound recording shall be paid by the user to both the performers and the producer, who, in the absence of any agreement shall share equally. (Sec. 47, P.D. No. 49a)

**SEC. 210. Limitation of Right. -**

Sections 184 and 185 shall apply *mutatis mutandis* to the producer of sound recordings. (Sec. 48, P.D. No. 49a)

## CHAPTER XIV BROADCASTING ORGANIZATIONS

### ***SEC. 211. Scope of Right. -***

Subject to the provisions of Section 212, broadcasting organizations shall enjoy the exclusive right to carry out, authorize or prevent any of the following acts:

211.1. The rebroadcasting of their broadcasts;

211.2. The recording in any manner, including the making of films or the use of video tape, of their broadcasts for the purpose of communication to the public of television broadcasts of the same; and

211.3. The use of such records for fresh transmissions or for fresh recording. (Sec. 52, P.D. No. 49)

## CHAPTER XV LIMITATIONS ON PROTECTION

### ***Sec. 212. Limitations on Rights. -***

The provisions of Chapter VIII shall apply *mutatis mutandis* to the rights of performers, producers of sound recordings and broadcasting organizations.

## CHAPTER XVI TERM OF PROTECTION

### ***SEC. 213. Term of Protection. -***

213.1. Subject to the provisions of Subsections 213.2 to 213.5, the copyright in works under Sections 172 and 173 shall be protected during the life of the author and for fifty (50) years after his death. This rule also applies to posthumous works. (Sec. 21, first sentence, P.D. No. 49a)

213.2. In case of works of joint authorship, the economic rights shall be protected during the life of the last surviving author and for fifty (50) years after his death. (Sec. 21, second sentence, P.D. no. 49)

213.3. In case of anonymous or pseudonymous works, the copyright shall be protected for fifty (50) years from the date on which the work was first lawfully published: *Provided*, That where, before the expiration of the said period, the author's identity is revealed or is no longer in doubt, the provisions of Subsections 213.1 and 213.2 shall apply, as the case may be: *Provided, further*, That such works if not published before shall be protected for fifty (50) years counted from the making of the work. (Sec. 23, P.D. No. 49)

213.4. In case of works of applied art the protection shall be for a period of twenty-five (25) years from the date of making. (Sec. 24(B), P.D. No. 49a)

213.5. In case of photographic works, the protection shall be for fifty (50) years from publication of the work and, if unpublished, fifty (50) years from the making. (Sec. 24(C), P.D. 49a)

213.6. In case of audio-visual works including those produced by process analogous to photography or any process for making audio-visual recordings, the term shall be fifty (50) years from date of publication and, if unpublished, from the date of making. (Sec. 24(C), P.D. No. 49a)

***SEC. 214. Calculation of Term. -***

The term of protection subsequent to the death of the author provided in the preceding Section shall run from the date of his death or of publication, but such terms shall always be deemed to begin on the first day of January of the year following the event which gave rise to them. (Sec. 25, P.D. No. 49)

***SEC. 215. Term of Protection for Performers, Producers and Broadcasting Organizations. -***

215.1. The rights granted to performers and producers of sound recordings under this law shall expire:

- (a) For performances not incorporated in recordings, fifty (50) years from the end of the year in which the performance took place; and
- (b) For sound or image and sound recordings and for performances incorporated therein, fifty (50) years from the end of the year in which the recording took place.

215.2. In case of broadcasts, the term shall be twenty (20) years from the date the broadcast took place. The extended term shall be applied only to old works with subsisting protection under the prior law. (Sec. 55, P.D. No. 49a)

## CHAPTER XVII

### INFRINGEMENT

#### **SEC. 216. *Infringement.* -**

Any person infringes a right protected under this Act when one:

- (a) Directly commits an infringement;
- (b) Benefits from the infringing activity of another person who commits an infringement if the person benefiting has been given notice of the infringing activity and has the right and ability to control the activities of the other person;
- (c) With knowledge of infringing activity, induces, causes or materially contributes to the infringing conduct of another.
- (d) 216.1 Remedies for Infringement
- (e) Any person infringing a right protected under this law shall be liable:
  - (f) To an injunction restraining such infringement. The court may also order the defendant to desist from an infringement, among others, to prevent the entry into the channels of commerce of imported goods that involve an infringement, immediately after customs clearance of such goods.
  - (g) To pay to the copyright proprietor or his assigns or heirs such actual damages, including legal costs and other expenses, as he may have incurred due to the infringement as well as the profits the infringer may have made due to such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or, in lieu of actual damages and profits, such damages which to the court shall appear to be just and shall not be regarded as penalty: *Provided*, That the amount of damages to be awarded shall be doubled against any person who:
    - (h) Circumvents effective technological measures; or
    - (i) Having reasonable grounds to know that it will induce, enable, facilitate or conceal the infringement, remove or alter any electronic rights management information from a copy of a work, sound recording, or fixation of a performance, or distribute, import for distribution, broadcast, or communicate to the public works or copies of works without

authority, knowing that electronic rights management information has been removed or altered without authority.

- (j) Deliver under oath, for impounding during the pendency of the action, upon such terms and conditions as the court may prescribe, sales invoices and other documents evidencing sales, all articles and their packaging alleged to infringe a copyright and implements for making them.
- (k) Deliver under oath for destruction without any compensation all infringing copies or devices, as well as all plates, molds, or other means for making such infringing copies as the court may order.
- (l) Such other terms and conditions, including the payment of moral and exemplary damages, which the court may deem proper, wise and equitable and the destruction of infringing copies of the work even in the event of acquittal in a criminal case.

The copyright owner may elect, at any time before final judgment is rendered, to recover instead of actual damages and profits, an award of statutory damages for all infringements involved in an action in a sum equivalent to the filing fee of the infringement action but not less than Fifty thousand pesos (Php50,000.00). In awarding statutory damages, the court may consider the following factors:

- (1) The nature and purpose of the infringing act;
- (2) The flagrancy of the infringement;
- (3) Whether the defendant acted in bad faith;
- (4) The need for deterrence;
- (5) Any loss that the plaintiff has suffered or is likely to suffer by reason of the infringement; and
- (6) Any benefit shown to have accrued to the defendant by reason of the infringement.

In case the infringer was not aware and had no reason to believe that his acts constitute and infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not more than Ten thousand pesos (Php10,000.00): *Provided*, That the amount of damages to be awarded shall be doubled against any person who:

- (i) Circumvents effective technological measures; or
- (ii) Having reasonable grounds to know that it will induce, enable, facilitate or conceal the infringement, remove or alter any electronic rights management information from a copy of a work, sound recording, or fixation of a performance, or distribute, import for distribution, broadcast, or communicate to the public works or copies of works without

authority, knowing that electronic rights management information has been removed or altered without authority.

216.2. In an infringement action, the court shall also have the power to order the seizure and impounding of any article which may serve as evidence in the court proceedings, in accordance with the rules on search and seizure involving violations of intellectual property rights issued by the Supreme Court. (Sec.28, P.D. No. 49a)

The foregoing shall not preclude an independent suit for relief by the injured party by way of damages, injunction, accounts or otherwise.

### ***SEC. 217. Criminal Penalties***

217.1. Any person infringing any right secured by provisions of Part IV of this Act or aiding or abetting such infringement shall be guilty of a crime punishable by:

- (a) Imprisonment of one (1) year to three (3) years plus a fine ranging from Fifty thousand pesos (P50,000) to One hundred fifty thousand pesos (P150,000) for the first offense.
- (b) Imprisonment of three (3) years and one (1) day to six (6) years plus a fine ranging from One hundred fifty thousand pesos (P150,000) to Five hundred thousand pesos (P500,000) for the second offense.
- (c) Imprisonment of six (6) years and one (1) day to nine (9) years plus a fine ranging from Five hundred thousand pesos (P500,000) to One million five hundred thousand pesos (P1,500,000) for the third and subsequent offenses.
- (d) In all cases, subsidiary imprisonment in cases of insolvency.

217.2. In determining the number of years of imprisonment and the amount of fine, the court shall consider the value of the infringing materials that the defendant has produced or manufactured and the damage that the copyright owner has suffered by reason of the infringement: *Provided*, That the respective maximum penalty stated in Section 217.1. (a), (b) and (c) herein for the first, second, third and subsequent offense, shall be imposed when the infringement is committed by:

- (a) The circumvention of effective technological measures;
- (b) The removal or alteration of any electronic rights management information from a copy of a work, sound recording, or fixation of a performance, by a person, knowingly and without authority; or
- (c) The distribution, importation for distribution, broadcast, or communication to the public of works or copies of works, by a person without authority, knowing that electronic rights management information has been removed or altered without authority.

217.3. Any person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of:

- (a) Selling, letting for hire, or by way of trade offering or exposing for sale, or hire, the article;
- (b) Distributing the article for purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or
- (c) Trade exhibit of the article in public, shall be guilty of an offense and shall be liable on conviction to imprisonment and fine as above mentioned. (Sec. 29, P.D. No. 49a)

**SEC. 218. Affidavit Evidence. -**

218.1. In an action under this Chapter, an affidavit made before a notary public by or on behalf of the owner of the copyright in any work or other subject matter and stating that:

- (a) At the time specified therein, copyright subsisted in the work or other subject matter;
- (b) He or the person named therein is the owner of the copyright; and
- (c) The copy of the work or other subject matter annexed thereto is a true copy thereof.

The affidavit shall be admitted in evidence in any proceedings under this Chapter and shall be *prima facie* proof of the matters therein stated until the contrary is proved, and the court before which such affidavit is produced shall assume that the affidavit was made by or on behalf of the owner of the copyright.

218.2. In an action under this Chapter-

- (a) Copyright shall be presumed to subsist in the work or other subject matter to which the action relates if the defendant does not put in issue the question whether copyright subsists in the work or other subject matter; and
- (b) Where the subsistence of the copyright is established, the plaintiff shall be presumed to be the owner of the copyright if he claims to be the owner of the copyright and the defendant does not put in issue the question of his ownership.
- (c) Where the defendant, without good faith, puts in issue the questions of whether copyright subsists in a work or other subject matter to which the action relates, or the ownership of copyright in such work or subject matter, thereby occasioning unnecessary costs or delay in the proceedings, the court may direct that any costs to the defendant in respect of the action shall not be allowed by him and that any costs occasioned by the defendant to other parties shall be paid by him to such other parties. (n)

***SEC. 219. Presumption of Authorship. -***

219.1. The natural person whose name is indicated on a work in the usual manner as the author shall, in the absence of proof to the contrary, be presumed to be the author of the work. This provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

219.2. The person or body, corporate whose name appears on an audio-visual work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of said work. (n)

***SEC. 220. International Registration of Works. -***

A statement concerning a work, recorded in an international register in accordance with an international treaty to which the Philippines is or may become a party, shall be construed as true until the contrary is proved except:

220.1. Where the statement cannot be valid under this Act or any other law concerning intellectual property.

220.2. Where the statement is contradicted by another statement recorded in the international register. (n)

***SEC. 220A. Disclosure of Information. -***

Where any article or its packaging or an implement for making it is seized or detained under a valid search and seizure under this Act is, or is reasonably suspected to be, by an authorized enforcement officer, in violation of this Act, the said officer shall, wherever reasonably practicable, notify the owner of the copyright in question or his authorized agent of the seizure or detention, as the case may be.

## **CHAPTER XVIII**

### **SCOPE OF APPLICATION**

***SEC. 221. Points of Attachment for Works under Sections 172 and 173. -***

221.1. The protection afforded by this Act to copyrightable works under Sections 172 and 173 shall apply to:

- (a) Works of authors who are nationals of, or have their habitual residence in the Philippines;

- (b) Audio-visual works the producer of which has his headquarters or habitual residence in the Philippines;
- (c) Works of architecture erected in the Philippines or other artistic works incorporated in a building or other structure located in the Philippines;
- (d) Works first published in the Philippines; and
- (e) Works first published in another country but also published in the Philippines within thirty days, irrespective of the nationality or residence of the authors.

221.2. The provisions of this Act shall also apply to works that are to be protected by virtue of and in accordance with any international convention or other international agreement to which the Philippines is a party. (n)

***SEC. 222. Points of Attachment for Performers. -***

The provisions of this Act on the protection of performers shall apply to:

222.1. Performers who are nationals of the Philippines;

222.2. Performers who are not nationals of the Philippines but whose performances:

- (a) Take place in the Philippines; or
- (b) Are incorporated in sound recordings that are protected under this Act; or
- (c) Which has not been fixed in sound recording but are carried by broadcast qualifying for protection under this Act. (n)

***SEC. 223. Points of Attachment for Sound Recordings. -***

The provisions of this Act on the protection of sound recordings shall apply to:

223.1. sound recordings the producers of which are nationals of the Philippines; and

223.2. Sound recordings that were first published in the Philippines. (n)

***SEC. 224. Points of Attachment for Broadcasts. -***

224.1. The provisions of this Act on the protection of broadcasts shall apply to:

- (a) Broadcasts of broadcasting organizations the headquarters of which are situated in the Philippines; and
- (b) Broadcasts transmitted from transmitters situated in the Philippines.

224.2. The provisions of this Act shall also apply to performers who, and to producers of sound recordings and broadcasting organizations which, are to be protected by virtue of and in accordance with any international convention or other international agreement to which the Philippines is a party. (n)

## CHAPTER XIX INSTITUTION OF ACTIONS

### ***SEC. 225. Jurisdiction. -***

Without prejudice to the provisions of Subsection 7.1(c), actions under this Act shall be cognizable by the courts with appropriate jurisdiction under existing law. (Sec. 57, P.D. No.49a)

### ***SEC. 226. Damages. -***

No damages may be recovered under this Act after the lapse of four (4) years from the time the cause of action arose. (Sec. 58, P.D. No. 49)

## CHAPTER XX MISCELLANEOUS PROVISIONS

### ***SEC. 227. Ownership of Deposit and Instruments. -***

All copies deposited and instruments in writing filed with the National Library and the Supreme Court Library in accordance with the provisions of this Act shall become the property of the Government. (Sec. 60,P.D. No. 49)

### ***SEC. 228. Public Records. -***

The section or division of the National Library and the Supreme Court Library charged with receiving copies and instruments deposited and with keeping records required under this Act and everything in it shall be opened to public inspection. The Director of the National Library is empowered to issue such safeguards and regulations as may be necessary to implement this Section and other provisions of this Act. (Sec. 61, P.D. No. 49)

### ***SEC. 229. Copyright Division Fees. -***

The Copyright Section of the National Library shall be classified as a Division upon the effectivity of this Act. The National Library shall have the power to collect, for the discharge of its services under this Act, such fees as may be promulgated by it from time to time subject to the approval of the Department Head. (Sec. 62, P.D. 49a)

### ***SEC. 230. Adoption of Intellectual Property (IP) Policies. -***

Schools and universities shall adopt intellectual property policies that would govern the use and creation of intellectual property with the purpose of safeguarding the intellectual creations of the learning institution and its employees, and adopting locally-established industry practice fair use guidelines. These policies may be developed in relation to licensing agreements entered into by the learning institution with a collective licensing organization.

## **INTELLECTUAL PROPERTY OFFICE OF THE PHILIPPINES (IPOPHL) ISSUANCES ON COPYRIGHT AND RELATED RIGHTS**

The IPOPHL Director General, pursuant to Section 7.1(a) of the IP Code which grants the power to promulgate rules and guidelines to implement the objectives, policies, plans, programs, and projects of IPOPHL, has issued the following circulars on copyright and related rights.

**SUBJECT: PHILIPPINE REGULATIONS IMPLEMENTING THE MARRAKESH  
TREATY TO FACILITATE ACCESS TO PUBLISHED WORKS FOR  
PERSONS WHO ARE BLIND, VISUALLY IMPAIRED OR OTHERWISE  
PRINT DISABLED**

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**Whereas**, Section 1, Article XIV of the Philippine Constitution provides that:

The State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.

**Whereas**, the Intellectual Property Office of the Philippines (IPOPHL) is mandated to administer and implement the state policies declared in Republic Act No. 8293, the Intellectual Property Code of the Philippines (IP Code), as amended by Republic Act No. 10372;

**Whereas**, Sec. 2 of the IP Code, as amended, states that:

The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.

**Whereas**, Sec. 184.1(I) of the IP Code, as amended, provides, as one of the limitations on copyright:

The reproduction or distribution of published articles or materials in specialized format exclusively for the use of the blind, visually- and reading-impaired persons: Provided, that such copies and distribution shall be made on a nonprofit basis and shall indicate the copyright owner and the date of the original publication.

**Whereas**, as State Party to the UN Convention on the Rights of Persons with Disabilities, government entities commit to implement all of the provisions thereof, particularly Articles 24.3, 30.1 and 30.3, which state, to wit:

24.3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

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(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

30.1 States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities: (a) enjoy access to cultural materials in accessible formats;

30.2 States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

**Whereas**, Republic Act No. 7277, as amended, or the Magna Carta for Persons with Disabilities, declares that:

The State shall take into consideration the special requirements of persons with disability in the formulation of educational policies and programs. It shall encourage learning institutions to take into account the special needs of persons with disability with respect to the use of school facilities, class schedules, physical education requirements, and other pertinent consideration.

**Whereas**, on November 12, 2018, the President of the Republic of the Philippines, had signed the Instrument of Accession to the "Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled" (MVT);

**Whereas**, the Instrument of Accession was deposited with the Director General of the World Intellectual Property Organization (WIPO), in Geneva, Switzerland, on December 18, 2018, and consequently, per Article 19 (b) of the MVT, the said treaty had been in effect in the Philippines on March 18, 2019;

**Whereas**, there is a need to establish regulations that would properly and effectively implement the provisions of Sec. 184.1 of the IP Code and of the MVT, taking into consideration the balancing of rights inherent in the intellectual property system;

**NOW, THEREFORE,** pursuant to the authority of the Director General under Section 7.1(a) of the IP Code that grants the power to manage and direct all functions and activities of the IPOPHL including the promulgation of rules and guidelines to implement the objectives, policies, plans, programs, and projects of the Office, the following Rules are hereby adopted and promulgated, as follows:

**RULE I**  
**GENERAL PROVISIONS**

**Section 1.     *Short Title.*** – These regulations shall be known as the "Philippine Marrakesh Regulations".

**Section 2.     *Coverage.*** – These rules shall apply to facilitating access to certain published works without the authorization of the right holder, exclusively for the benefit of persons who are blind, visually impaired or otherwise print-disabled and under conditions provided below.

**Section 3.     *Definitions.*** –

- a. Accessible format copy - a copy of a work in an alternative or specialized manner or form, including Braille, audio books and other existing formats or ones that may be developed in the future, which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability.
- b. Authorized entity - an entity that refers to
  - (i) Organizations that are explicitly recognized or approved by the government to make and share accessible format copies. This includes for profit entities authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to print-disabled individuals. This may also include entities receiving financial support from the government to provide the said activities on a non-profit basis; or
  - (ii) A government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations.
- c. Beneficiary person - a person who is, regardless of any other disabilities:
  - (i) blind;
  - (ii) visually impaired or has a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or

disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or

- (iii) otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.
- d. Bureau or BCRR – Bureau of Copyright and Related Rights
- e. Director – Director of the Bureau of Copyright and Other Related Rights.
- f. Right holder – owner of copyright over works.
- g. Works – literary and artistic works within the meaning of Sec. 172.1 (original intellectual creations) and 173.1 (derivative works) of the IP Code, in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media, including in audio form.

## RULE II AUTHORIZATION OF ENTITIES

**Section 1. Authorizing Government Agency.** –The IPOPHL, through the BCRR, is mandated to authorize and recognize entities defined in Sec. 3 (b) of Rule I above. A nonrefundable application fee, plus 1% legal research fee, shall be paid by the applicant entity to cover expenses of the proceedings and administrative costs.

**Section 2. Authorization of For-Profit Entities** – For-profit entities shall request the BCRR for recognition as authorized entity by submitting the following documents:

- a. Formal letter request for authorization;
- b. Latest reportorial requirements or documents submitted to, duly stamped “received,” or issued by the Securities and Exchange Commission (SEC), including:
  - Certificate of Incorporation;
  - Articles of Incorporation and By-Laws;
  - General Information Sheet (GIS); and
  - Audited Financial Statements.
- c. Organizational structure;
- d. List of activities for the benefit of visually impaired persons within the last year;

- e. List of reproduced works in the accessible format copy, if any;
- f. Statement under oath that –
  - activities to be undertaken in connection with the request shall be for non-profit purposes; and
  - the documents submitted are true and faithful reproductions of the original, and that the material information or data contained in the request are likewise true and faithful representations of the facts.

**Section 3. *Authorization of Non-Profit Organizations.*** – Non-profit organizations shall request the BCCR for recognition as authorized entity by submitting the following documents:

- a. Formal letter request for authorization;
- b. Latest reportorial requirements or documents submitted to, duly stamped “received” or issued by the Securities and Exchange Commission (SEC), including:
  - Certificate of Incorporation;
  - Articles of Incorporation and By-Laws;
  - General Information Sheet (GIS); and
  - Audited Financial Statements.
- c. Organizational structure;
- d. List of activities for the benefit of visually impaired persons within the last year;
- e. List of reproduced works in the accessible format copy, if any; and
- f. Statement under oath that the documents submitted are true and faithful reproductions of the original, and that the material information or data contained in the request are likewise true and faithful representations of the facts.

**Section 4. *Authorization of Government Agencies.*** – Government agencies that provide education, instructional training, adaptive reading or information access to print-disabled individuals pursuant to their mandates shall submit a letter addressed to the BCRR, informing the latter of its intention to avail of the rights granted under the Marrakesh Treaty and of Sec. 184.1(1) of the IP Code.

**Section 5. *Authorized Beneficiary Person.*** – Notwithstanding the authorization of entities, a beneficiary person/s, or someone acting on his or her or their behalf, including a primary caretaker, trusted caregiver or personal assistant, is/are authorized to make an accessible format copy of a work for personal use of the beneficiary person or otherwise may assist the

beneficiary person to make and use accessible format copies where the beneficiary person has lawful access to that work or a copy of that work.

**Section 6. *Third Party Observation.*** – Within three (3) days from filing, the letter request for authorization shall be published in the IPOPHL website. Any interested party may submit written observations thereon to the BCRR within fifteen (15) days from said publication. Within three (3) days from submission of any written observation, the BCRR shall communicate the observations to the applicant entity who may comment on them within ten (10) days from receipt of said communication. The BCRR shall acknowledge and consider the observations and comments in making its decision.

**Section 7. *Decision of the Director.*** – The Director shall examine the merits of the request for authorization within thirty (30) days from receipt of the last observation or comment of the parties. Thereafter, the Director shall render a decision granting or denying authorization. The corresponding certificate shall be issued within one (1) week from date of the decision.

**Section 8. *Denial of Authorization or of Renewal.*** – Authorization or renewal thereof may be denied on the following grounds:

- (a) Non-compliance with the provisions of Sections 2 or 3 above;
- (b) The information supporting the application and/or the third-party observation reveal that the entity cannot effectively perform the duties and responsibilities of an authorized entity as enumerated in Sec. 11 below; and
- (c) Misrepresentation and other analogous circumstances.

**Section 9. *Effectivity of Authorization.*** – The authorization shall be effective for a period of three (3) years starting from the date of issuance of the decision granting the authorization.

**Section 10. *Duties and Responsibilities of Authorized Entities.*** – Authorized entities shall have the following duties and responsibilities:

- a. Establish that the persons they serve are beneficiary persons;
- b. Limit to beneficiary persons and/or authorized entities its distribution and making available of works in accessible format copies;
- c. Prevent the reproduction, distribution and making available of unauthorized copies;

- d. Maintain due care in, and records of, its handling of copies of works, while respecting the privacy of beneficiary persons in accordance with Republic Act No. 10173, the Data Privacy Act of 2012; and
- e. Provide the following information in an accessible way, on request, to beneficiary persons, other authorized entities or right holders:
  - (i) the list of works or other subject matter for which it has accessible format copies and the available formats; and
  - (ii) the name and contact details of the authorized entities with which it has engaged in the exchange of accessible format copies pursuant to Rule IV below.
- f. Assist the BCRR in information dissemination on the MVT, Section 184.1 of the IP Code, and these rules to beneficiary persons, potential authorized entities and the general public.

**Section 11. *Reportorial Requirement.*** – Authorized entities shall submit the information required under Section 11(e) to BCRR on or before the anniversary of its authorization or manifestation of authorized status.

**Section 12. *Renewal of Authorization.*** – An authorized entity may apply for renewal of its authorization at least thirty (30) days before the expiration of the term, and submitting any updates on the requirements in Sections 2 and 3 above.

**Section 13. *Publication upon Approval or Renewal of Authorization.*** – BCRR shall publish, in the IPOPHL website, the list of authorized entities, their contact details and their corresponding certificates, as may be allowed under Republic Act No. 10173, or the Data Privacy Act of 2012.

**Section 14. *Suspension and Cancellation of Authorization.*** – The BCRR Director shall suspend, *motu proprio* or at the instance of the beneficiary person/s, or an interested party, after giving the concerned entity due notice and opportunity to be heard, the authorization of an entity, for any of the following grounds:

- a. Perjury, false representation, falsification, forgery and misrepresentation of documents, material information or data contained in the documents submitted under Sections 2 or 3 as may be determined by the BCRR;

- b. Failure to engage in any of the activities under Section 1, Rule III within one (1) year after authorization. In this connection, an authorized entity may be allowed to surrender its certificate or authorization should, in its assessment, it will not be able to perform any of the said activities; and
- c. Failure to submit the reportorial requirements as contained in Section 12.

Except in the case of (a) which shall be a ground for permanent cancellation, compliance or non-compliance with the requirements of (b) within six (6) months and (c) within three (3) months, from the date of suspension shall trigger the issuance of a compliance order or permanent cancellation order, as the case may be.

**Section 15. *New Application.*** – The entity whose authorization has been cancelled may file a new application for authorization within six (6) months, subject to the same requirements and procedure as the previous application.

**Section 16. *Appeal to the Director General.*** – The decision of the Director denying authorization or renewal thereof, or suspending the authorization, shall be appealable to the Director General, subject to the IPOPHL Uniform Rules on Appeal, as amended.

### RULE III AUTHORIZED ACTIVITIES

**Section 1. *Authorized Activities.*** – Authorized entities are permitted, without the consent of the right holder, to do the following authorized activities:

- a. Make an accessible format copy of a work;
- b. Obtain from another authorized entity an accessible format copy, and supply those copies to beneficiary persons by any means, including non-commercial lending or by electronic communication by wire or wireless means; and
- c. Undertake any intermediate steps necessary and indispensable to the above activities.

**Section 2. *Relation to Contract*** – The authorized activities above cannot be overridden by contract.

**Section 3. *Conditions for the Making of Accessible Format Copies of a Work.*** - Authorized entities shall be permitted to make accessible format copies of a work, subject to the following conditions:

- a. The authorized entity must have lawful access to the work or a copy of the work. This means that the authorize must have a legitimate and original copy of the work to be converted;
- b. The work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to the beneficiary person;
- c. The accessible format copy shall indicate the copyright owner and date of the original publication;
- d. Such accessible format copies are supplied exclusively to be used by beneficiary persons; and
- e. The conversion is undertaken on a non-profit basis and does not unreasonably prejudice the legitimate interests of the right holder.

**Section 4. *Reasonable Fees*** – Nothing in this rule precludes an authorized entity from charging a reasonable fee for making or sharing accessible format copies in order to cover its expenses.

## RULE IV

### CROSS-BORDER EXCHANGE OF ACCESSIBLE FORMAT COPIES

**Section 1. *Exchange through an Authorized Entity.*** – Authorized entities are permitted, without the authorization of the right holder, to import, distribute or make available for the exclusive use of beneficiary persons accessible format copies from an authorized entity in another Contracting Party to the MVT, or to export to an authorized entity in such Party.

**Section 2. *Exchange through a Beneficiary Person.*** – Authorized entities are permitted, without the authorization of the right holder, to import, distribute or make available for the exclusive use of beneficiary persons accessible format copies from a beneficiary person in another Contracting Party to the MVT, or to export to a beneficiary person in such Party.

**Section 3. *Importation for Personal Use.*** – A beneficiary person, someone acting on his or her behalf, or an authorized entity, is permitted, without the authorization of the right holder, to import an accessible format copy for the personal use of such person.

**Section 4. *Voluntary Sharing of Information.*** – Authorized entities are encouraged to voluntarily share information that would assist them in identifying one another and in ascertaining policies and practices, to interested parties and members of the public, as may be allowed under Republic Act No. 10173 or the Data Privacy Act of 2012.

## RULE V FINAL PROVISIONS

**Section 1. *Construction in Favor of Beneficiaries.*** – These Implementing Rules and Regulations shall be liberally construed to promote access to, and use of works, by the herein beneficiary persons. All doubts in the implementation and interpretation of these Rules shall be resolved in favor of the beneficiary persons, consistent with the spirit and letter of the Marrakesh Treaty and Section 2 in relation to Sec. 184.1 of the Intellectual Property Code.

**Section 2. *Without Prejudice to Other Limitations and Exceptions.*** – Nothing in these rules shall affect any provisions which promote access to and use of works by beneficiary persons, which may be contained in national law and international treaties in force in the Philippines.

**Section 3. *Information Dissemination.*** – The BCRR, with the assistance of concerned government agencies and authorized entities, shall make the MVT, Section 184.1 of the IP Code, and these rules widely known, through active and appropriate means and formats, to beneficiary persons, potential authorized entities and the general public.

**Section 4. *Separability Clause.*** – If any section or provision of these Rules shall be held to be invalid, the remaining provisions shall remain in full force and effect as completely as if the part held invalid has not been included therein.

**Section 5. *Effectivity.*** – These Rules shall take effect after fifteen (15) days from publication in a newspaper of general circulation.

**Section 6. *Furnishing of Certified Copies.*** – Certified copies of this Memorandum Circular shall be filed with the University of the Philippines Law Center, the Department of Trade and Industry, the Senate of the Philippines, the House of Representatives, the Supreme Court of the Philippines and the National Library.

Done this 20<sup>th</sup> day of December 2019, at Taguig City, Philippines.

(Sgd.) JOSEPHINE R. SANTIAGO, LL.M.  
Director General

## IPOPHL MEMORANDUM CIRCULAR NO. 2020-022

### **SUBJECT: REVISED RULES AND REGULATIONS ON THE RESOLUTION OF DISPUTES RELATING TO THE TERMS OF A LICENSE INVOLVING THE AUTHOR'S RIGHT TO PUBLIC PERFORMANCE OR OTHER COMMUNICATION OF HIS WORK**

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WHEREAS, Section 13, Article XIV of the 1987 Constitution declares that “[t]he State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law”;

WHEREAS, the State enacted Republic Act No. 8293, the Intellectual Property Code of the Philippines (IP Code), as amended, in pursuit of the above policy;

WHEREAS, Part IV of the IP Code refers to the Law on Copyright, which provides for the rights of creators of literary and artistic works as well as the protection and enforcement of such rights.

WHEREAS, in the proper implementation of the Law on Copyright, there is a need to clarify the provisions thereof for the guidance of the general public and thus promote awareness and respect of copyright as an intellectual property;

WHEREAS, there is a need to revise and update the existing Revised Rules and Regulations on Resolution of Disputes Relating to the Terms of a License Involving the Author's Right to Public Performance or Other Communication of His Work, as contained in Intellectual Property Office of the Philippines (IPOPHL) Office Order No. 13-169 (2013), in order to better realize the objectives thereof as well as to properly address the concerns of all stakeholders;

NOW, THEREFORE, pursuant to the foregoing, the following rules and regulations are hereby adopted:

**Section 1. *Short Title.*** – These Rules and Regulations shall be referred to as the “Revised Rules on the Resolution of Public Performance Disputes.”

**Section 2. *Scope.*** – These Rules shall govern the procedure to be observed in the resolution of disputes involving the author's right to public performance or other communication of his work.

**Section 3. *Definition of Terms.*** – Unless otherwise specified, the following terms shall have the meaning herein provided:

- (a) “*Author*” or “*Creator*” – the natural person who created a work.
- (b) “*Bureau*” or “*BCRR*” – the Bureau of Copyright and Other Related Rights of the Intellectual Property Office of the Philippines.
- (c) “*Communication to the public*” or “*communicate to the public*” – any communication to the public, including broadcasting, rebroadcasting, retransmitting by cable, broadcasting and retransmitting by satellite, and includes the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them.
- (d) “*Director General*” – the head of the Intellectual Property Office of the Philippines.
- (e) “*Director*” – the Director of the Bureau of Copyright and Other Related Rights.
- (f) “*Alternative Dispute Resolution Service*” – the department or unit of the Intellectual Property Office primarily in charge of mediation proceedings.
- (g) “*Mediator*” – any officer designated by the Alternative Dispute Resolution Service to amicably resolve disputes.
- (h) “*Office*” – refers to the Intellectual Property Office of the Philippines.
- (i) “*Public performance*” – (1) the showing of images in sequence and the making of the sounds accompanying it audible in the case of an audiovisual work; (2) the act of making the recorded sounds audible, in the case of a sound recording; (3) the recitation, playing, dancing, acting or otherwise performing, either directly or by means of any device or process, in the case of a work other than an audiovisual work.

Public performance as defined above must be made in a place or places where persons outside the normal circle of a family and that family’s closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and at the same time, or at different places and/or at different times, and where the performance can be perceived without the need for communication within the meaning of ‘communication to the public’ or ‘communicate to the public’.

**Section 4. *Jurisdiction of the Director.*** – The Director of the Bureau of Copyright and Other Related Rights shall exercise original jurisdiction to resolve disputes relating to the terms of a license involving the author’s right to public performance or other communication of his work.

**Section 5. *Jurisdiction of the Director General.*** – The Director General shall exercise exclusive appellate jurisdiction over decisions or final orders of the Director of the Bureau of Copyright and Other Related Rights in the latter’s exercise of his original jurisdiction.

**Section 6. *Who may File a Complaint.*** – Any person affected by the terms of a license involving the author’s right to public performance or other communication of his work may file a complaint with the Director.

**Section 7. *How Complaint is Filed.*** – A person aggrieved by the terms of a license involving the author’s right to public performance or other communication of his work shall file a Complaint Affidavit with the Director, copy furnished the respondent.

Proof of service of a copy of the Complaint Affidavit to the respondent shall be attached to the Complaint Affidavit. Proof of payment of the prescribed filing fee shall likewise be attached.

**Section 8. *Period to File Complaint.*** – Any complaint must be filed with the Office of the Director within four (4) years from the time the cause of action arose.

**Section 9. *Contents of the Complaint Affidavit.*** – The Complaint Affidavit shall state the following:

- (a) Name and address of the complainant and the name and address of the respondent;
- (b) Brief statement of the nature of the complaint;
- (c) The demands or reliefs sought;
- (d) Verification and certification of non-forum shopping.

**Section 10. *Notice to Answer.*** – Within three (3) days from receipt of the Complaint Affidavit, the Director shall issue a Notice to Answer addressed to the respondent. The Notice to Answer shall be served upon the respondent by mail or personal service.

**Section 11. *Answer.*** – The respondent shall file the answer to the Complaint Affidavit within ten (10) days from receipt of the Notice to Answer. The Answer shall state the respondent’s defenses, specifically denying the material allegations of the complaint. The Answer may also contain affirmative defenses.

**Section 12. *Motion to Dismiss.*** – No motion to dismiss shall be allowed.

**Section 13. *Mediation Process.*** – Within three (3) days from receipt of the Answer, the Director shall refer the case to the Alternative Dispute Resolution Service for mediation. The

Rules on Alternative Dispute Resolution Service of the Office shall apply during the mediation period until the case is referred back to the Bureau.

**Section 14. *Judgment on Compromise.*** – In case of a successful mediation, the Director shall render a judgment based on compromise within five (5) days from the time the case is referred back to the Bureau.

**Section 15. *Order to Submit Memoranda.*** – In case of an unsuccessful mediation, the Director shall issue an order addressed to the parties to submit their respective memoranda within five (5) days from the time the case is referred back to the Bureau.

**Section 16. *Memoranda.*** – The parties shall submit their respective memoranda within ten (10) days from receipt of the order mentioned in the immediately preceding section. The memoranda of the parties shall be supported by evidence.

**Section 17. *Clarificatory Hearing.*** – Within ten (10) days from receipt of the last memorandum, the Director may call the parties to a clarificatory hearing, if he deems necessary.

**Section 18. *Decision of the Director.*** – Within twenty (20) days from receipt of the last memorandum or after a clarificatory hearing, the Director shall render a Decision.

Before rendering a Decision, the Director may seek the assistance of acknowledged experts in their relevant field, whether in the government service or in the private sector.

**Section 19. *Service of Copy of the Decision.*** – The Decision of the Director shall be served to each of the parties through personal service or, if not practicable, through registered mail.

**Section 20. *Finality of the Decision of the Director.*** – Unless a motion for reconsideration is filed or an appeal is taken, the Decision of the Director shall become final and executory within thirty (30) days from receipt of a copy thereof by the parties.

**Section 21. *Motion for Reconsideration.*** – Any party aggrieved may file a motion for reconsideration within thirty (30) days from receipt of the decision of the Director. Only one motion for reconsideration shall be allowed.

**Section 22. *Appeal before the Office of the Director General.*** – The parties may file an appeal before the Office of the Director General in accordance with the IPOPHL Uniform Rules on Appeal.

**Section 23. Escrow.** – Any party may elect to avail of the provisions of the Civil Code of the Philippines on consignment with respect to the royalty or any sum of money that may be involved in disputes covered by these Rules. The complainant shall submit a certified true copy of the Contract of Escrow to the Director.

**Section 24. Suppletory Application of the Rules of Court.** – In the absence of any applicable provision in these Rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect.

**Section 25. Amendment.** – All rules and regulations, office orders, memoranda, circulars and memorandum circulars or parts thereof, and other issuances of the Office inconsistent with these Rules are hereby deemed repealed or amended accordingly.

**Section 26. Separability.** – If any provision in these Rules and Regulations or application of such provision to any circumstance is held invalid, the remainder thereof shall not be affected thereby.

**Section 27. Furnishing of Certified Copies.** – The IPOPHL Administrative, Financial and Human Resource Development Service Bureau is hereby directed to immediately file three (3) certified copies of these rules with the Office of the National Administrative Register of the University of the Philippines Law Center.

**Section 28. Effectivity.** – These Rules and Regulations shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Done this 3rd day of July, 2020, at Taguig City, Philippines.

(Sgd.) **ROWEL S. BARBA**  
Director General

**IPOPHL MEMORANDUM CIRCULAR NO. 2020-023**

**SUBJECT: IMPLEMENTING RULES AND REGULATIONS ON RESALE RIGHTS**

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WHEREAS, Section 13, Article XIV of the 1987 Constitution declares that “[t]he State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law”;

WHEREAS, the State enacted Republic Act No. 8293, the Intellectual Property Code of the Philippines (IP Code), as amended, in pursuit of the above policy;

WHEREAS, Sec. 200 of the IP Code provides for a right to proceeds in subsequent transfers, or resale right, for artists;

WHEREAS, there is a need to establish implementing rules and regulations pertaining to the rights to proceeds in subsequent transfers with the view of protecting copyright owners and contribute significantly to the resolution of disputes arising from the interpretation of Sec. 200;

WHEREAS, Sec. 7.1(a) of the IP Code grants the Director General the power to manage and direct all functions and activities of the IPOPHL including the promulgation of rules and guidelines to implement the objectives, policies, plans, programs and projects of the Office;

NOW, THEREFORE, in view of the foregoing, the following Rules are hereby adopted and promulgated.

**RULE I  
GENERAL PROVISIONS**

**Section 1. *Short Title.*** – These Rules and Regulations shall be known and referred to as the “Rules on Resale Rights.”

**Section 2. *Definition of Terms.*** – For purposes of these Rules, the following terms shall have the meanings provided below:

(a) *“Accredited collective management organization”* – a collective management organization duly recognized by IPOPHL/Bureau after successfully undergoing the accreditation process laid out in the Rules on the Accreditation of Collective Management Organizations;

(b) *“Author”* or *“Creator”* – the natural person who has created the work;

(c) *“Art Market Professional”* – someone acting in the course of a business of dealing in works of art. The term is used interchangeably with *“professional party”* or *“intermediary”* as defined below;

(d) *“Bureau”* – refers to the Bureau of Copyright and Other Related Rights of IPOPHL;

(e) *“Collective management organization”* – a group of artists or copyright/related rights holders whose primary purpose is to collectively manage copyright and/or related rights, including any combination or all of the following activities:

- (i) Negotiation with and grant of licenses to users of protected literary, scholarly, scientific and artistic works, derivative works, performances, sound recordings and broadcasts;
- (ii) Collection of royalties and other forms of remuneration for the use of the abovementioned; or
- (iii) Distribution of the said collection to the rights holders;

(f) *“First disposition”* – the first transfer of ownership of a work with or without consideration. In commissioned works, the transfer of ownership from the author to the person who commissioned the work shall be considered the first disposition;

(g) *“Gross proceeds of the sale or lease”* – the consideration stated in the sales document or the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, excluding value added tax (VAT). It means the same as *“gross selling price”*;

(h) *“Lease”* – a contract whereby one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite;

- (i) “*Professional party*” or “*intermediary*” – refers to auction houses, art galleries, art salesrooms, or any dealer in works of art;
- (j) “*Public Museum*” – an institution with a permanent collection, governed by an elected or appointed board, founded by civically minded people, existing for the stewardship of its collection and the education of the public.
- (k) “*Resale*” – the sale of a work subsequent to the first disposition thereof by the author;
- (l) “*Resale right*” – the right of artists or their heirs to receive royalty from the resale of their work. It also means their right to participate or share in the proceeds of the subsequent sale or lease of their work. It is also called “*droit de suite*.”
- (m) “*Resale royalty*” – the remuneration given to the author or his heirs ensuing from the resale right;
- (n) “*Seller*” – a person who owns a work by virtue of a first or subsequent disposition;
- (o) “*Work*” – an original work of painting or sculpture or of the original manuscript of a writer or composer; and
- (p) “*Work of joint authorship*” – a work created by two or more authors.

**Section 3. Coverage.** – These Rules shall apply to the sale or lease of an author’s original works of painting, sculpture or manuscript subsequent to the first disposition thereof by the author, and notwithstanding that the works sold may have been made before the effectivity of these Rules.

**Section 4. Works not Covered.** – These Rules shall not apply to the following:

- a. Prints, etchings, engravings, works of applied art, and works of a similar kind wherein the author primarily derives gain from the proceeds of reproductions; and
- b. Subsequent sales that are:
  - i. Made directly between private individuals without the participation of an art market professional; or
  - ii. Made by individuals to public museums.

**Section 5. *Authors Covered.*** – These Rules cover authors who are citizens of the Philippines and of other member states of the Berne Convention with resale rights provisions in their national copyright legislation.

**RULE II  
RESALE RIGHT AS  
A SPECIAL ECONOMIC RIGHT**

**Section 6. *Ownership of Resale Right.*** –

- 6.1 The author of a work, whether done independently or pursuant to employment or commission, is entitled to resale rights. Upon the author’s death, such right is transmissible to his/her heir(s).
- 6.2 In the case of a work of joint authorship, the right shall belong to the authors as co-owners. They shall hold it in equal shares or as may be agreed upon in writing signed by or on behalf of each party.

**Section 7. *Term of Protection.*** – The resale right subsists during the lifetime of the author plus fifty (50) years after his death. In case of works of joint authorship, the resale right shall be reckoned from the moment of creation plus fifty (50) years after the death of the last surviving author.

**Section 8. *Royalty Rate.*** – The resale royalty shall be to the extent of five percent (5%) of the gross proceeds of the subsequent sale or lease, computed based on Section 14.1 below.

**Section 9. *Presumption of Authorship.*** – Where a name purporting to be that of the author appears on a work at the time of its creation, the person whose name appears thereon shall, unless the contrary is proved, be presumed to be the author of the work.

**Section 10. *Inalienability of Resale Right.*** –

- 10.1 Resale right can neither be taken away from nor given away by the author except in the case of succession or other circumstances as may be provided by law.
- 10.2 Resale right can neither be sold nor waived.
- 10.3 Any charge or encumbrance on, or assignment or waiver of, or agreement to share or repay, the resale right is void.

**RULE III**  
**MECHANICS OF RESALE**

**Section 11. *Mechanics of Resale.* —**

- 11.1 The sale of an original work of art, even if the first transfer of ownership was not made for any consideration, money or otherwise, shall be regarded as a resale provided:
- a) The subsequent sale involves a professional party or intermediary. In case of lease, the same must be for a period longer than one (1) year and covered by a written contract.
  - b) The work is enrolled and registered in the Registry established in Rule IV hereof.
- 11.2 "First transfer of ownership" shall include in particular:
- a) Transmission of the work from the author by testamentary disposition, or in accordance with the rules of intestate succession;
  - b) Disposal of the work by the author's personal representatives for the purposes of administration of his estate;
  - c) Disposal of the work by an official receiver or a trustee in bankruptcy, for the purposes of the realization of the author's estate.

**Section 12. *Liability to Pay Resale Royalty.* —**

- 12.1 Payment of resale royalty shall be made by the seller to the author or his heirs within sixty (60) days from the date of the sale or lease of a work.
- 12.2 The seller may withhold payment from a person claiming resale rights until sufficient evidence of entitlement thereto is produced.
- 12.3 In case of joint authorship, payment by the seller of the total amount of resale royalty to one of the authors shall discharge the former from paying resale royalty to the other author/s. The co-author who received the payment shall have the obligation to ensure that the other co-authors, their heirs or assigns, shall receive their respective royalty share.

**Section 13. *Management of Resale Right.* —**

- 13.1 *Collective Management.* — The resale right may be exercised through an accredited collective management organization by virtue of an authorization allowing management of the right. The management of resale right is the collection of resale royalty on behalf of the holder of the right in return for a commission, a fixed fee or a percentage of the royalty.

13.2 *Individual management.* — Where the holder of the right has not transferred its management to a collective management organization, the former alone shall be responsible for monitoring and collecting the resale royalty.

**Section 14. *Calculation of Resale Royalty.* —**

14.1 Subject to the limit established in Section 200 of the IP Code, the resale royalty payable on the subsequent transfer of a work shall be the sum of the following amounts, being percentage amounts of consecutive portions of the sale price:

| <u>Gross Selling Price (PhP)</u> | <u>Percentage amount</u> |
|----------------------------------|--------------------------|
| Up to 150,000.00                 | 5%                       |
| 150,000.01 – 350,000.00          | 4%                       |
| 350,000.01 – 600,000.00          | 3%                       |
| 600,000.01 – 1,000,000.00        | 2%                       |
| 1,000,000.01 – 2,000,000.00      | 1.5%                     |
| 2,000,000.01 – above             | 1%                       |

14.2 If the sale price is not in Philippine Peso, the price shall be converted into Philippine Peso at the *Bangko Sentral ng Pilipinas* reference rate prevailing on the contract date.

**RULE IV  
CREATION OF A REGISTRY  
OF QUALIFIED WORKS**

**Section 15. *Creation of a Registry of Qualified Works.*** — There is hereby created a National Registry of Qualified Works to be maintained by the Bureau. This Registry shall provide the means for the enrollment and registration of works that qualify for the application of resale right. It shall also serve as the repository of information on the author of the work for purposes of remittance on the resale royalty.

**Section 16. *Collection of Fees.*** — The Bureau shall collect appropriate fees for this service.

**RULE V**  
**DISPUTE RESOLUTION**

**Section 17. *Filing of Claim*** – All claims or disputes arising from the application of this Implementing Rules and Regulations shall be filed within one (1) year from the time cause of the action arose. Such claim shall be considered filed upon payment of the requisite filing fee.

**Section 18. *Original Jurisdiction*** – All claims or disputes arising from the application of this Implementing Rules and Regulations shall be brought before the Office of the Director of the Bureau of Copyright.

**Section 19. *Appellate Jurisdiction*** – Parties aggrieved by the decision of the Director of the Bureau of Copyright and Other Related Rights may file an appeal before the Director General of the Intellectual Property Office of the Philippines within 30 days from receipt of the decision of the Director of the Bureau. The decision of the Director General shall be final.

**RULE VI**  
**FINAL PROVISIONS**

**Section 20. *Amendment***. – All rules and regulations, office orders, memoranda, circulars and memorandum circulars or parts thereof, and other issuances of the Office inconsistent with these Rules are hereby deemed repealed or amended accordingly.

**Section 21. *Separability***. – If any section or provision in these Rules shall be held invalid, the remaining provisions shall remain in full force and effect as completely as if the part held invalid had not been included therein.

**Section 22. *Furnishing of Certified Copies***. – The IPOPHL Administrative, Financial and Human Resource Development Service Bureau is hereby directed to immediately file three (3) certified copies of these rules with the Office of the National Administrative Register of the University of the Philippines Law Center.

**Section 23. *Effectivity***. – These Rules shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Done this 3rd day of July 2020 at Taguig City, Philippines.

(Sgd.) **ROWEL S. BARBA**  
Director General

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**IPOPHL MEMORANDUM CIRCULAR NO. 2020-024**

**SUBJECT: COPYRIGHT RULES AND REGULATIONS FOR THE GOVERNMENT**

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WHEREAS, Section 13, Article XIV of the 1987 Constitution declares that “[t]he State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law”;

WHEREAS, the State enacted Republic Act No. 8293, the Intellectual Property Code of the Philippines (IP Code), as amended, in pursuit the above policy;

WHEREAS, the government itself, through its branches, agencies and instrumentalities, is a creator of works which, although not copyright-protected, enjoy certain protections pursuant to Section 176 of the IP Code under the concept of “works of the government”;

WHEREAS, government, through its branches, agencies and instrumentalities, also utilizes works belonging to other agencies, entities and individuals, both public and private;

WHEREAS, there is a need to clarify the rights and duties of government in relation to the creation, utilization and protection of works protected under the IP Code;

WHEREAS, Sec. 7.1(a) of the IP Code grants the Director General the power to manage and direct all functions and activities of the IPOPHL including the promulgation of rules and guidelines to implement the objectives, policies, plans, programs and projects of the Office;

NOW, THEREFORE, in view of the foregoing, the following rules and regulations are hereby adopted and promulgated.

**RULE I  
PRELIMINARY PROVISIONS**

**Section 1. *Short Title.*** – These Rules and Regulations shall be known and referred to as the “Copyright Rules for the Government.”

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**Section 2. Scope.** — These Rules shall apply to all works created or used by the Government of the Philippines as defined herein, but excludes works covered by Republic Act No.10055, otherwise known as the “Technology Transfer Act of 2009.”

**Section 3. Definitions.** — For purposes of these Rules, the following terms shall have the meanings provided below:

- a. “Fair Use” – the use of a copyrighted work for criticism, comment, news reporting, teaching including multiple copies for classroom use, scholarship, research, and similar purposes. In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include: (i) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; (ii) The nature of the copyrighted work; (iii) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (iv) The effect of the use upon the potential market for or value of the copyrighted work.
- b. “Government” — refers to those offices within the scope of the Civil Service, particularly the legislative, executive, and judicial branches, and the subdivisions, instrumentalities, and agencies of the Government of the Philippines, including government-owned or controlled corporations with original charters, the Armed Forces of the Philippines, and the Civil Service Commission, Commission on Elections, and Commission on Audit, as well as other offices and bodies created by the Constitution, other chartered institutions including state universities and colleges, and local/community colleges;
- c. “Moral Rights” – refers to the rights of an author: (i) To require that the authorship of the works be attributed to him, in particular, the right that his name, as far as practicable, be indicated in a prominent way on the copies, and in connection with the public use of his work; (ii) To make any alterations of his work prior to, or to withhold it from publication; (iii) To object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honor or reputation; and (iv) To restrain the use of his name with respect to any work not of his own creation or in a distorted version of his work.
- d. “Officer of the Government” — refers to a person holding office in the Philippine Government, either in the career or non-career service, by direct provision of law, popular election, or appointment by a competent authority under a permanent, temporary, substitute, co-terminus, fixed-term, contractual, or casual employment status. It is used herein as synonymous to the term “government employee”;

- e. *“Regularly prescribed official duties”* — refers to the duties and responsibilities stated in an employee’s or officer’s Civil Service Commission Memorandum Circular (CSC MC) Form No. 1, otherwise known as the *“Position Description Form,”* including functions related thereto.
- f. *“Work of the Government”* — a work created by an officer or employee of the Philippine Government or any of its subdivisions and instrumentalities, including government-owned or controlled corporations, as a part of the officer or employee’s regularly prescribed official duties;

**RULE II**  
**THE GOVERNMENT AS CREATOR**  
**AND USER OF WORKS**

**Section 4.** *The Government as Creator of Works.* – The Government, through its branches, agencies and instrumentalities, may be a creator of works.

**4.1** *No copyright on works of the Government.* — No copyright shall subsist in any work of the Government created by an officer or employee thereof as a part of his or her regularly prescribed official duties, as defined above. However, this does not create the requirement that such work be made publicly available without restrictions nor does this preclude the Government or any of its agencies from asserting protection in countries where copyright is provided for government works.

While the government does not own the copyright to a work of any of its officers or employees when such work was created as a part of the regularly prescribed official duties of the latter, the government is not precluded from exercising proprietary rights over the work against any party.

**4.2** *Works created by a government employee or for the Government by a non-government employee.* —

- a. Notwithstanding the immediately preceding Subsection, copyright subsists in the following works which, due to the nature and circumstances of their creation, are not considered works of the Government:
  - 1. Works that are not part of the regularly prescribed official duties of a government employee; or

2. Works made for the Government by an author who is not a government employee. This includes works created by a consultant.
- b. Unless the author of the works mentioned in Sec. 4.2 (a) paragraphs 1 and 2 above transfers the copyright over the work to the Government in accordance with the provisions of Section 180 of the IP Code, the author remains as the owner of the copyright.
- 4.3** *Use and Exploitation of Works of the Government.* — Any natural or juridical person, association, entity, or institution may use and exploit the works of the Philippine government; *Provided*, that prior approval is obtained in the following instances:
- a. From the government agency or office wherein the work is created, for exploitation of such work for profit. The agency or office may impose as a condition the payment of reasonable fees akin to royalties;
  - b. From both the government agency and the private author in case of works of joint authorship if such work will be exploited for profit;
  - c. From the government agency or office where the government is the transferee of copyright through assignment, bequest or otherwise; and
  - d. From the authors of speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character, for the purpose of making a collection thereof.

**4.4** *When Prior Approval Not Needed.* — Except for the specific and limited purpose of making a collection thereof, as mentioned in Section 4.3.d above, no prior approval or conditions shall be required for the use of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character.

**Section 5.** *The Government as User of Works.* – The Government, may be a user of works belonging to other agencies, entities and individuals, both public and private.

**5.1** *Prior Permission.* – If copyright subsists over a work that is to be used by the Government, permission shall first be sought by the latter from the owner or assignee

of the copyright. Likewise, prior permission shall be obtained for the use by a government agency of a work belonging to another agency.

**5.2 *Statutory Fair Use.*** — The use of a work by the Government or under its direction or control is considered as statutory fair use and does not constitute copyright infringement under the following conditions:

- a. When the use is in the interest of the public; and
- b. When the use is compatible with fair use.

**5.3 *Moral rights.*** — In the use by the Government of works, the moral rights of authors as provided in Sec. 193 of the IP Code shall be respected.

### RULE III THE GOVERNMENT AS ASSIGNEE OF COPYRIGHT

**Section 6. *The Government as Assignee or Holder of Copyright.*** — The Government is not precluded from receiving and holding copyright transferred to it by assignment, bequest or otherwise, in accordance with the provisions of Chapter VII of the IP Code. This Rule also contemplates the assignment of works mentioned in Section 4.2 (b) hereof.

**6.1 *Rights of Government over Assigned Copyright.*** — Within the scope of the assignment or license, the Government is entitled to all the rights and remedies which the assignor or licensor had with respect to the copyright, including the right to sue in its own name.

**Section 7. *No abridgment of copyright on work upon publication or republication by the Government.*** — Publication or republication by the Government in a public document of any work in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such work without the consent of the copyright owner.

### RULE IV FINAL PROVISIONS

**Section 8. *Amendment.*** — All rules and regulations, office orders, memoranda, circulars and memorandum circulars or parts thereof, and other issuances of the Office inconsistent with these Rules are hereby deemed repealed or amended accordingly.

**Section 9. *Separability*** — If any section or provision in these Rules shall be held invalid, the remaining provisions shall remain in full force and effect as completely as if the part held invalid had not been included therein.

**Section 10. *Furnishing of Certified Copies***. — The IPOPHL Administrative, Financial and Human Resource Development Service Bureau is hereby directed to immediately file three (3) certified copies of these rules with the Office of the National Administrative Register of the University of the Philippines Law Center.

**Section 11. *Effectivity***. — These Rules shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Done this 3rd day of July 2020 at Taguig City, Philippines.

(Sgd.) **ROWEL S. BARBA**  
Director General

**IPOPHL MEMORANDUM CIRCULAR NO. 2020-025**

**SUBJECT: REVISED RULES AND REGULATIONS ON COPYRIGHT  
REGISTRATION AND RECORDATION OF TRANSFER,  
ASSIGNMENT AND LICENSE OF COPYRIGHT**

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WHEREAS, Section 13, Article XIV of the 1987 Constitution declares that “[t]he State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law”;

WHEREAS, the State enacted Republic Act No. 8293, the Intellectual Property Code of the Philippines (IP Code), as amended, in pursuit of the above policy;

WHEREAS, Sec. 191 of the IP Code, as amended by Sec. 16 of Republic Act No. 10372, provides for the registration and deposit of works with the National Library and the Supreme Court Library at any time during the subsistence of the copyright

WHEREAS, in a Memorandum of Agreement (MOA) signed on January 25, 2011, the National Library of the Philippines (NLP) deputized the IPOPHL as a receiving office for the registration and deposit of copyrighted works as well as documents pertaining to deeds of assignment or transfer;

WHEREAS, there is a need to revise and update the existing Rules and Regulations on Copyright Registration and Deposit as contained in Office Order No. 13-171 (2013) in order to streamline and facilitate the registration of works;

NOW, THEREFORE, pursuant to the foregoing, the following rules and regulations are hereby adopted:

**RULE I  
GENERAL PROVISIONS**

**Section 1. *Short Title.*** – These Rules and Regulations shall be referred to as the “Revised Rules on Copyright Registration.”

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**Section 2. Scope.** – These Rules and Regulations shall apply to manual and online registration of copyrighted works and the recordation of deeds of assignment, transfer and exclusive license of copyright, before the IPOPHL. They may be adapted *mutatis mutandis* by the National Library of the Philippines (NLP). This rule shall not affect the system of deposit of works in the field of law maintained by the Supreme Court Library.

**Section 3. Definition of Terms.** – The following terms as used in this Rule are defined as follows:

- 3.1 “Assignee” – the person or entity to which the author or copyright holder has assigned the copyright in whole or in part. Within the scope of the assignment, the assignee is entitled to all the rights and remedies which the assignor had with respect to the copyright;
- 3.2 “Assignment” or “Transfer” – the transfer, in whole or in part, by the author or copyright owner of his economic right over a literary, artistic or scientific work. Assignment or transfer involves a transfer of copyright ownership;
- 3.3 “Author” or “Creator” – the natural person who has created the work;
- 3.4 “Bureau” or “BCRR” – the Bureau of Copyright and Other Related Rights of the Intellectual Property Office of the Philippines;
- 3.5 “Copyright” – the right granted by a statute to the proprietor of a literary, artistic or scientific work to its exclusive use and enjoyment to the extent specified in the statute;
- 3.6 “Deposit” – the act of submitting original or copies of a work to the Bureau;
- 3.7 “Director” – the Director of the Bureau of Copyright and Other Related Rights of the Intellectual Property Office of the Philippines;
- 3.8 “Director General” – the head of the Intellectual Property Office of the Philippines;
- 3.9 “Heir” – the person called to the succession either by the provision of a will or by operation of law;
- 3.10 “License” – a contract by which a copyright owner allows the use and exploitation of his work for a fee, without transferring ownership of the copyright thereof to another person called the licensee;
- 3.11 “Office” – the Intellectual Property Office of the Philippines;

- 3.12 “*Recordation*” – the act of putting into the official records of the Bureau of the transfer or assignment of or the exclusive license over a work without depositing the work itself;
- 3.13 “*Registration*” – the process by which an author or creator submits a claim over a work by filing the required documents and by depositing the work itself with the Bureau;
- 3.14 “*Storage Medium*” – a device that serves as container of electronic data including, but not limited to, universal serial bus (USB) flash drives, optical discs, magnetic tapes or such other device that may be developed in the future;

## RULE II REQUIREMENTS FOR COPYRIGHT REGISTRATION

**Section 1. *Who may Apply.*** – The author or creator of the work may apply for a certificate of copyright registration. In case of death of, or assignment by, the author or creator, the heir or the assignee, as the case may be, may apply for a certificate of registration.

**Section 2. *How Application is Made.*** – The application for registration and the payment of the filing fee therefor, shall be made in person or online, by the author, heir, or assignee as the case may be, or through his duly authorized representative to the IPOPHL.

In case the applicant for registration is a non-resident, application may be made by a duly authorized resident agent.

### **Section 3. *Registration Form.*** –

- 3.1 Single Registration – All applicants for copyright registration shall accomplish and file the prescribed Registration Form (RF). The RF shall be filed in three (3) copies for each work sought to be registered.
- 3.2 Bulk Registration – Authors may apply for the registration of their works in bulk provided all of the conditions below are satisfied. A certificate of registration shall be issued for each work and will be charged the applicable registration fee for each work.
- a. The works to be registered must not be less than ten (10);
  - b. All the works must fall under the same category; and
  - c. All the works must be created by the same author or the same joint authors.

**Section 4. *Additional Documentary Requirements.*** – In addition to the RF, applicants other than the author or creator shall also submit the original or certified true copy of the following documents:

- 4.1.1 *For Heirs* – Documents establishing the heir’s right of succession:

- a. The death certificate of the author or creator;
- b. Applicant's birth certificate, marriage certificate, or other documents establishing applicant's relationship to the deceased author or creator;
- c. Will or any document evidencing designation as heir, if applicable.

4.1.2 *For Assignees* – Documents establishing assignment of rights:

- a. The Deed of Assignment;
- b. The author or creator's waiver of ownership of copyright; and
- c. Other documents evidencing transfer of ownership to the assignee.

4.1.3 *For Representatives* – Documents establishing the fact that applicant is authorized by the author, heir or assignee to file an application for copyright registration and deposit of the work:

- a. A special power of attorney, if representing a natural person;
- b. A Board Resolution or a Secretary's Certificate, if representing a juridical person.

## 4.2 Identification documents

4.2.1 *For natural persons* – any competent evidence of identity, which refers to the identification of an individual based on:

- a. One (1) valid identification card bearing the photograph and signature of the individual; or
- b. Oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

4.2.2 *For juridical persons* – certificate of registration issued by the Securities and Exchange Commission (for partnerships or corporations) or business name registration issued by the Department of Trade and Industry (for single proprietorships and only if the author is other than the owner of the single proprietorship).

In the case of foreign juridical persons, certificate of registration issued by the Securities and Exchange Commission or equivalent government agency in the foreign jurisdiction in charge of registration of proprietorships, partnerships and corporations. The certificate must be duly authenticated or apostilled.

4.3 Official receipt of the filing fee.

4.4 Work to be deposited in the manner provided in Section 5 hereof.

**Section 5. *Manner of Depositing.*** – The works shall be deposited in the following manner:

5.1 Two (2) originals or an electronic copy submitted in a storage medium for the following works:

- a. Books, pamphlets, articles, e-books, audio books, comics, novels, and other writings;
- b. Periodicals, newspapers, journals, diaries, magazines, e-zines;
- c. Lectures, sermons, addresses, speeches, dissertations prepared for oral delivery;
- d. Letters, circulars, encyclicals, e-mail and other electronic messages;
- e. Dramatic or dramatico-musical compositions, plays, operas, choreographic works, pantomimes, magic routines and other novelty acts;
- f. Musical compositions with or without lyrics;
- g. Audio-visual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;
- h. Computer programs/software/e-games/applications;
- i. Other literary, scholarly, scientific and artistic works, including reports, studies, researches, theses, and other academic papers, examinations, online course materials, and presentations;
- j. Sound recordings; and
- k. Broadcast recordings.

5.2 Two (2) 5R photographs, or two (2) copies of the work, or an electronic copy submitted in a storage medium:

- a. Drawings, paintings, architectural works, sculpture, engraving, prints, lithography or other works of art, models or designs for works of art;
- b. Ornamental designs or models for articles of manufacture and industrial objects, and other works of applied art;
- c. Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
- d. Drawings or plastic works of a scientific or technical character;
- e. Photographic works including works produced by a process analogous to photography, lantern slides; and
- f. Pictorial illustrations and advertisements.

### RULE III PROCEDURE FOR MANUAL REGISTRATION

**Section 1. *Review of RF.*** – After submission of the prescribed RF and other required documents, as provided under Rule II above, the application shall be reviewed for:

- 1.1 Proper categorization of the work;
- 1.2 Completeness of the documents submitted; and
- 1.3 Correctness and consistency of the entries in the RF and the supporting documents.

**Section 2. *Issuance of Statement of Account.*** – Upon a finding that all the requirements for copyright registration are in order, the applicant shall be issued a Statement of Account (SOA) and shall be directed to pay the prescribed filing fee with the cashier.

**Section 3. *Encoding, Scanning and Uploading of Application.*** –

- 3.1 Upon showing of the proof of payment of filing fee, an RF number shall be generated, indicating the date of filing thereof;
- 3.2 After generating the RF number, the bibliographic entry of the work shall be encoded in the copyright database;
- 3.3 Scanned copies of the required documents, including the SOA and the official receipt shall also be included in the database;
- 3.4 The encoded data shall be reviewed for quality control.

**Section 4. *Release of Certificate.*** – The Certificate of Registration shall be released to the applicant within seven (7) working days from filing of the RF with complete documents.

**Section 5. *Allowable Amendments/Corrections.*** – All information written in the RF concerning the ownership of copyright, authorship and title of the work shall be deemed final and shall be reflected in the certificate.

No correction shall be made in the RF and the certificate of registration unless:

- 5.1 The correction sought is substantial in nature;
- 5.2 A written request is filed; and
- 5.3 The prescribed filing fee is paid.

**Section 6. *Contents of the Certificate.*** – The Certificate of Registration shall contain the following:

- 6.1 Name of the applicant or copyright holder
- 6.2 Title of the work
- 6.3 Name of the author
- 6.4 Category where the work belongs
- 6.5 Date of creation
- 6.6 Period of protection
- 6.7 Signature of the Director of the Bureau of Copyright
- 6.8 Statement that the registration and deposit is made for the purpose of completing the records of the National Library.

#### **RULE IV DENIAL OF APPLICATION AND REMEDIES**

**Section 1. *Denial of application.*** – An application for copyright registration may be denied by the Bureau Director if:

- 1.1 The work does not fit the statutorily defined categories of works under the copyright law; and
- 1.2 The work is the subject of a prior registration.

**Section 2. *Appeal.*** – The decision of the Bureau Director shall be appealable to the Director General following the IPOPHL Uniform Rules on Appeal.

#### **RULE V POST-REGISTRATION**

**Section 1. *Transmittal of Deposited Works to the National Library of the Philippines (NLP)*** – The Bureau shall have temporary custody of all the deposited works and shall transmit the same to the NLP on a semi-annual basis.

**Section 2. *Cancellation of Certificate.*** – The Bureau Director may, upon written request by an interested party and upon payment of applicable fee equivalent to the application fee,

cancel the Certificate of Copyright Registration covering a specific work on the following grounds:

- 2.1 Upon a final court decision ordering the cancellation of the certificate;
- 2.2 By final order of the Director of the Bureau of Legal Affairs of the IPOPHL in copyright infringement cases; or
- 2.3 Upon recordation of the assignment or transfer as provided under Rule VII hereof or under the rules of the NLP;

**Section 3. *Certified True Copy (CTC) of the Certificate.*** – A certified true copy of the Certificate of Copyright Registration may be issued by the BCRR upon written request of the copyright owner or any interested party, and upon payment of the applicable fee.

**Section 4. *Reissuance of the Certificate.*** – The Certificate of Copyright Registration may be reissued by the BCRR upon written request of the copyright owner and upon payment of the applicable fee. A duly notarized affidavit of loss shall be attached to the written request for reissuance of the certificate.

**Section 5. *Request for Certifications other than CTC and Reissuance.*** – Upon written request by any interested party, a certification on the existence or non-existence of Copyright Registration under the name of a specific person or entity shall be issued upon payment of the applicable fee.

**Section 6. *Administration of Copyright Registration Database.*** – The NLP and IPOPHL shall jointly administer the copyright registration database.

## RULE VI COPYRIGHT ONLINE REGISTRATION AND DEPOSIT SYSTEM (CORDS)

**Section 1. *Online Accomplishment of Forms.*** – The copyright holder shall fill-out the RF in the IPOPHL website: [www.ipophil.gov.ph](http://www.ipophil.gov.ph).

**Section 2. *Submission of Supporting Documents.*** – The applicant shall upload a digital copy of the work and other supporting documents as required under Rule II, Section 4 above.

**Section 3. *Payment of Applicable Fees.*** – The IPOPHL website will prompt the copyright holder or his/her representative to pay the filing fee online using acceptable payment

methods. An electronic receipt will be delivered through the copyright holder's registered electronic mail after the payment is processed.

**Section 4. *Release of Certificate.*** – The Bureau will cause the preparation of the electronic certificate and send to the copyright holder through his official email address on record. The Bureau shall employ technological protection measures to safeguard the integrity and authenticity of the electronic certificate.

**Section 5. *Transmittal of Deposited Works to NLP.*** - The Bureau shall transmit the deposited works electronically to the NLP on a semi-annual basis.

## RULE VII RECORDATION OF COPYRIGHT TRANSFER, ASSIGNMENT AND LICENSE

**Section 1. *Who may Apply.*** – The author or creator of the work, his transferee, assignee or licensee may apply for the recordation of copyright transfer, assignment or exclusive license. The heirs, in case of death of any the interested parties mentioned, may apply for copyright recordation.

**Section 2. *How Application is Made.*** – The author, heir, assignee, transferee or the exclusive licensee as the case may be, or through his duly authorized representative to the IPOPHL, may file the application for copyright recordation either manually or by electronic means.

In cases of manual application where the applicant for recordation is a non-resident, application may be made by a duly authorized resident agent.

**Section 3. *Required documents.*** –

### 3.1 Copyright Recordation Form

- 3.1.1 Single Recordation – All applicants for recordation of copyright transfer, assignment or exclusive license shall accomplish and file the prescribed Copyright Recordation Form (CRF).
- 3.1.2 Bulk Recordation – Interested parties may apply for the copyright recordation of the transfer, assignment or exclusive license of their works in bulk provided all the following the conditions are satisfied:
  - a. The deeds to be recorded must not be less than 10; and

b. The transferee, assignee or exclusive licensee must be the same person.

3.2 Three (3) copies of the notarized Deed of Assignment, Transfer or Exclusive License.

**Section 4. *Notation.*** – Upon recording, a copy of the instrument shall be returned to the party concerned with a notation of the fact of record.

**Section 5. *Publication of Recordation.*** – Notice of the record shall be published in the IPOPHL E-Gazette.

## RULE VIII FINAL PROVISIONS

**Section 1. *Amendment.*** – All rules and regulations, office orders, memoranda, circulars and memorandum circulars or parts thereof, and other issuances of the Office inconsistent with these rules are hereby deemed repealed or amended accordingly.

**Section 2. *Separability.*** – If any provision in these Regulations or application of such provision to any circumstance is held invalid, the remainder of these Regulations shall not be affected thereby.

**Section 3. *Furnishing of Certified Copies.*** – The IPOPHL Administrative, Financial and Human Resource Development Service Bureau is hereby directed to immediately file three (3) certified copies of these rules with the Office of the National Administrative Register of the University of the Philippines Law Center.

**Section 4. *Effectivity.*** – These rules and regulations shall take effect fifteen (15) days after publication in a newspaper of general circulation. However, Rule VI of this IRR shall take effect after fifteen (15) days from the issuance of a notice by this Office that the Copyright Online Registration and Deposit System (CORDS) is operational.

Done this 3rd day of July, 2020, at Taguig City, Philippines.

(Sgd.) **ROWEL S. BARBA**  
Director General

## IPOPHL MEMORANDUM CIRCULAR NO. 2020-026

### SUBJECT: REVISED RULES AND REGULATIONS ON ACCREDITATION OF COLLECTIVE MANAGEMENT ORGANIZATIONS AND SIMILAR ENTITIES

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WHEREAS, Section 13, Article XIV of the 1987 Constitution declares that “[t]he State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law”;

WHEREAS, the State enacted Republic Act No. 8293, the Intellectual Property Code of the Philippines (IP Code), as amended, in pursuit of the above policy;

WHEREAS, the IP Code as amended by Republic Act No. 10372 mandates the Intellectual Property Office of the Philippines (IPOPHL) to administer and implement State policies relating to intellectual property;

WHEREAS, Sec. 183 of the IP Code as amended, allows the owners of copyright and related rights or their heirs to designate a society of artists, writers, composers and other rights-holders, to collectively exercise their economic rights on their behalf, provided that these societies first secure the necessary accreditation from IPOPHL;

WHEREAS, there is a need to revise and update the existing Rules on Accreditation of CMOs as contained in IPOPHL Office Order No. 13-173 (2013) in order to better realize the objectives thereof as well as to properly address the concerns of all stakeholders;

NOW, THEREFORE, pursuant to the foregoing, the following rules and regulations are hereby adopted:

#### RULE I GENERAL PROVISIONS

**Section 1. *Short Title.*** These Rules and Regulations shall be known as the "Revised Rules on Accreditation of Collective Management Organizations."

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**Section 2. Definitions.** – For purposes of these Rules, the following terms shall have the meanings provided below:

- a. *“Author” or “Creator”* – the natural person who has created the work;
- b. *“Bureau”* – refers to the Bureau of Copyright and Other Related Rights of IPOPHL;
- c. *“Collective Management Organization” or “CMO”* – a non-stock, non-profit organization, local or foreign, duly accredited by IPOPHL, which has for its sole and principal purpose the exercise of copyright or related rights on behalf of more than one right holder, for the collective benefit of the said right-holders;
- d. *“Director”* – refers to the Director of the Bureau of Copyright and Other Related Rights;
- e. *“Director General”* – refers to the head of the Intellectual Property Office of the Philippines;
- f. *“License”* – refers to the permissions to use of a work while the copyright and ownership of the work remains with the author or creator;
- g. *“Royalty”* – remuneration given to the author or his heirs;
- h. *“Similar entities”* – entities other than a Collective Management Organization engaged in any of the functions of a CMO.

**Section 3. Scope.** These Rules and Regulations shall apply to:

- a. Entities which shall apply for accreditation as a CMO;
- b. Any CMO established before the effectivity of these Rules and is already engaged in any or all of the functions of an accredited CMO provided that such CMO shall, within three (3) months from effectivity hereof, apply for accreditation, if not yet accredited by the IPOPHL; and
- c. Similar entities who, upon determination by the Bureau, engage in any of the functions of a CMO enumerated under these Rules. Such entities shall be required to apply for accreditation within three (3) months from the Bureau’s determination that they engage in the functions of a CMO. Refusal to apply for

accreditation shall cause the Office to institute the proper legal remedies against such entities.

## RULE II PROCEDURE FOR ACCREDITATION

**Section 1. *Pre-Qualification Requirements.*** Only CMOs or similar entities meeting all the following pre-qualification requirements during initial screening may apply for accreditation with IPOPHL:

- a. Registration as a non-stock, non-profit corporation;
- b. Membership is composed of right-holders belonging to the sector whose rights shall be managed;
- c. The General Manager or Executive Director, as well as the heads of Documentation, Licensing, Distribution and Finance, as may be applicable, shall:
  - i. Be free of direct or indirect conflicts of interests both with the users of works and other subject matter, and members of the CMO;
  - ii. Have the required management or technical skill and expertise to perform their duties;
  - iii. Have at least sixteen (16) hours of training on copyright or any related topics relevant to the particular sector obtained from IPOPHL or other institutions offering IP courses or seminars, both local and abroad;
- d. The CMO shall have a supervisory Board that has the duty to oversee the management of the CMO. The Members of the Board shall have at least eight (8) hours of training on good governance, taken not earlier than three (3) years from the date of application; provided, however, that elected Board Members shall have a grace period of one (1) year from the accreditation to comply with the required hours of training on good governance.
- e. Managerial, material and administrative capability of enforcing the rights of its members and to distribute collected revenues as closely as possible according to actual use and in line with best practice in each relevant sector.

- f. Existence or establishment of an internal dispute resolution or any similar system providing for an effective and workable process of settling disputes and grievances between or among members of the CMO and its members, related to the membership agreement or the application of the CMO distribution rules, and of settling disputes between the CMO's members related to the registration of works or other subject matter.
- g. Compliance with any other reasonable requirement/s the IPOPHL may impose from time to time pursuant to its rule-making power and in accordance with due process.

**Section 2. *Documentary Requirements.*** In addition to the pre-qualification requirements in the immediately preceding Section, a duly accomplished application form shall be submitted in duplicate to the Bureau, along with the following documents:

- a. Articles of Incorporation and By-Laws;
- b. Bureau of Internal Revenue Registration, business permits and/or relevant government licenses or registrations;
- c. Organizational structure;
- d. List of Board members and officers, with respective biodata;
- e. List of members;
- f. List of current licensees (if applicable);
- g. List of authorized collecting agents, with respective contracts of agency;
- h. Business/Operations Manual (including published tariffs/rates per category and distribution rules);
- i. Documents used in business:
  - (i) Membership Agreement/Deed of Assignment;
  - (ii) Reciprocal agreements, if any;
  - (iii) Licensing Agreement;

- j. Audited Financial Statements, if already in operation.

**Section 3. *Application Fee.*** Upon submission of the duly-accomplished application form and required documents, a non-refundable application fee in such amount as approved by the Secretary of Trade and Industry shall be paid by the applicant to cover expenses of the proceedings and administrative costs.

**Section 4. *Third Party Observation.*** Within seven (7) days from filing, the application shall be published in the IPOPHL Website. Any interested party may submit written observations thereon to the Bureau of Copyright and Other Related Rights within thirty (30) days from the date of such publication. The observations shall forthwith be communicated within three (3) days from receipt thereof to the applicant, who may comment on them within ten (10) days from receipt of said communication. The Bureau shall acknowledge and consider the observations and comment in making its decision, and include the same in the file of the application to which it relates.

**Section 5. *Clarificatory hearing and assistance of experts.*** If necessary, the Director may, within ten (10) days from receipt of the last observation, call the parties to a clarificatory hearing. Furthermore, the Director may obtain the assistance of persons in the government and/or private sector who are acknowledged experts in their relevant field, of proven integrity and probity, when necessary, to resolve the matter.

**Section 6. *Decision of the Director.*** The Director shall render a decision granting or denying the application within twenty (20) days from the lapse of the period for filing third party observations or from the receipt of the last observation or comment.

**Section 7. *Issuance of the Certificate of Accreditation.*** The corresponding certificate of accreditation shall be issued within seven (7) days after the decision granting the same.

**Section 8. *Denial of Accreditation.*** Accreditation may be denied if:

- a. The applicant does not comply with the provisions of Sections 1 and 2 of Rule II above;
- b. The applicant committed fraud or willful misrepresentation in the compliance with the documentary requirements under Section 2 of Rule II above; and
- c. Such other grounds that would merit denial of the application for accreditation.

**Section 9. Remedies.** The decision of the Director denying accreditation shall become final and executory thirty (30) days after receipt of a copy thereof by the applicant unless within the same period, a motion for reconsideration is filed with the Director or an appeal to the Director General has been perfected by filing a notice of appeal and payment of the required fee in accordance with the IPOPHL Uniform Rules on Appeal.

Only one motion for reconsideration of the decision of the Director shall be allowed. If the motion is denied, the movant shall file his appeal within the balance of the period prescribed above to which he was entitled at the time of serving his motion.

**Section 10. Term of Accreditation.** The accreditation shall be effective for a period of five (5) years from the date stated in the order granting the accreditation.

**Section 11. Publication upon Approval of Accreditation.** IPOPHL shall publish, in the IPOPHL Website, the accreditation certificates, articles of incorporation and by-laws, organizational structure, rates for collecting licensing fees, and distribution rates and mechanism of the accredited CMO.

### RULE III EFFECTS OF ACCREDITATION

**Section 1. Rights of an Accredited CMO.** An accredited CMO has the right to:

- a. Administer any or all of the economic rights for which it has been accredited.
- b. Negotiate with and grant licenses to users of protected literary, scholarly, scientific and artistic works, derivative works, performances, sound recordings, and broadcasts;
- c. Collect royalties and other forms of remuneration, including proceeds in subsequent transfers, additional remuneration for subsequent communication or broadcast of a performance, and single equitable remuneration for the broadcast, other communication to the public or public performance of a sound recording or of an audiovisual fixation, as applicable;
- d. Distribute the said collection to their members;
- e. Sue and enforce administered rights, on behalf of its members, in its own name.

**Section 2. *Duties of an Accredited CMO.*** The accredited CMO shall:

- a. Ensure the faithful discharge of their obligations as well as compliance with applicable laws and regulations;
- b. Submit annual audited financial statements on or before April 30 of each year and allow the same to be posted in the IPOPHL website;
- c. Have an annual general meeting, which shall approve the CMO's accounts and annual report and such other matters provided in the organization's articles of incorporation and by-laws.
- d. Notify and invite an IPOPHL representative to its general membership meetings;
- e. Submit to IPOPHL documents and/or information involving the CMO and its stakeholders as may be requested by IPOPHL;
- f. Comply with these Rules and the orders of IPOPHL issued from time to time.

**Section 3. *Reporting of Changes.*** An accredited CMO, which has amended its articles of incorporation and by-laws or has undergone any change relative to its business (including changes in authorized collecting agents, if any), shall notify the IPOPHL thereof by submitting the amendments made or a summary of the changes within thirty (30) days from effectivity thereof or the occurrence of the change, as the case may be. If such change shall necessitate the amendment of the accreditation certificate, an amendment fee shall be paid.

#### **RULE IV POST-ACCREDITATION**

**Section 1. *Re-application for Accreditation.*** After the expiration of the period for accreditation, a CMO may re-apply for accreditation by updating the documents it originally submitted pursuant to Section 2, Rule II, above, and by paying the application fee as required in Section 3, Rule II. The Director shall consider the performance of the CMO in its previous accreditation and shall issue a resolution within fifteen (15) days from filing of the application.

**Section 2. *Suspension of Accreditation.*** The Director may suspend, either totally or partially, the accreditation of a CMO, after giving the latter an opportunity to be heard, if any one of the following circumstances are found after accreditation:

- a. The CMO tolerated or abetted any of its Board members or officers in violating any related law, rules and regulations issued by IPOPHL.
- b. Any of the documents or material information/data therein submitted by the CMO has been found to be false or untrue.
- c. Failure to maintain its compliance with the provisions of Section 1 of Rule II above.
- d. Failure to engage in any of the activities under Section 1 of Rule III within one year after accreditation.
- e. Failure to observe the parameters for collection and distribution of royalties and other forms of remuneration.
- f. Malicious breach of contract or fiduciary duty against any of its members, regarding the primary activities and the duties of an accredited CMO as set out in these Rules and/or the principles of transparency, efficiency and good governance, including the fair and proportionate representation of members in the CMO's governing bodies.
- g. Failure to give proper accounting to IPOPHL or to its members.
- h. Failure to comply with the mandatory submissions under Sec. 2(b) of Rule III hereof.

**Section 3. *Motion to Lift Suspension Order.*** The CMO may file a Motion to Lift Suspension with the Director within thirty (30) days from receipt of the order of suspension, provided, that the ground/s for denial or suspension has/have ceased to exist and it has complied with the pre-qualification and documentary requirements under Sections 1 and 2 of Rule II above.

**Section 4. *Cancellation of Accreditation.*** If the CMO whose accreditation is suspended fails to comply with the condition/s for the lifting thereof within six (6) months from the date of suspension as provided in the immediately preceding Section, an order cancelling its accreditation shall be issued. Upon complaint by any interested party, the Director may also cancel the accreditation of the CMO, based on the grounds enumerated in section 2 of this Rule.

**Section 5. *Effect of Non-accreditation, Denial, Total or Partial Suspension and Cancellation of Accreditation.*** A CMO who has not applied for accreditation after the effectivity of these Rules, or whose application has been denied, or its accreditation totally suspended or cancelled, cannot, under any circumstance, engage in any of the activities enumerated in Section 1 of Rule III. In case of partial suspension, the CMO may still engage in the activities enumerated in the same section with respect to the rights they are allowed to manage. Furthermore, CMO shall be banned from re-applying for accreditation for the remaining balance of the term of its original accreditation in case its certification of accreditation is cancelled.

**Section 6. *Notice to the Public.*** Any change in the status of accreditation of a CMO resulting from the above actions shall be notified to the public through the IPOPHL Website.

## RULE V FINAL PROVISIONS

**Section 1. *Retroactive Application; Exception.*** These Rules shall apply to cases pending before the Bureau or the Office of the Director General. Except for Section 10, Rule II, these Rules shall also apply to CMOs duly accredited before its effectivity.

**Section 2. *Separability Clause.*** If any section or provision of these Rules shall be held to be invalid, the remaining provisions shall remain in full force and effect as completely as if the part held invalid had not been included therein.

**Section 3. *Furnishing of Certified Copies.*** The IPOPHL Administrative, Financial and Human Resource Development Service Bureau is hereby directed to immediately file three (3) certified copies of these rules with the Office of the National Administrative Register of the University of the Philippines Law Center.

**Section 4. *Effectivity.*** These Rules shall take effect after fifteen (15) days from publication in a newspaper of general circulation.

Done this 3rd day of July, 2020, at Taguig City, Philippines.

(Sgd.) **ROWEL S. BARBA**  
Director General

## INTERNATIONAL COPYRIGHT TREATIES AND CONVENTIONS

This part contains accepted international norms that are manifested in international copyright treaties, conventions, and agreements. These international treaties have bearing on enforcement and management of rights. Moreover, national legislations are harmonized with these treaties, conventions, and agreements. Major international treaties on copyright<sup>1</sup> and related rights included in this book are:

- Berne Convention for the Protection of Literary and Artistic Works (Berne Convention)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)
- The World Intellectual Property Organization (WIPO) Copyright Treaty (WCT)

The Berne Convention and WCT are administered by the (WIPO). The TRIPS Agreement, on the other hand, is administered by the World Trade Organization (WTO) and covers not only copyright, but all intellectual property rights as well.

There are also treaties in the field of related rights<sup>1</sup> that are included in this book and these are:

- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention)
- The WIPO Performances and Phonograms Treaty (WPPT)
- Beijing Treaty on Audiovisual Performances (BTAP)
- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled

The Rome Convention is administered by three international bodies, namely: International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), and WIPO. The WPPT and BTAP are administered by WIPO<sup>1</sup>.

International copyright treaties have been agreed to and revised as a response to evolving technologies, starting from the Berne Convention in 1886 with the latest revision in 1971. The Rome Convention was a response to the needs of artists as well as sound recording and broadcasting industries in 1961. The TRIPS Agreement tackled international trade aspects in 1994. Meanwhile, the WCT and WPPT from 1996 and BTAP from 2012 are characterized as “internet treaties”. They contain new elements that are necessary for the delivery of protected works and other objects of protection through the Internet<sup>1</sup>.

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<sup>1</sup> Main International Treaties for Copyright and Related Rights are identified by WIPO and sources of information for these are contained in their learning materials.

# Berne Convention for the Protection of Literary and Artistic Works

of September 9, 1886,  
completed at PARIS on May 4, 1896,  
revised at BERLIN on November 13, 1908,  
completed at BERNE on March 20, 1914,  
revised at ROME on June 2, 1928,  
at BRUSSELS on June 26, 1948,  
at STOCKHOLM on July 14, 1967,  
and at PARIS on July 24, 1971,  
and amended on September 28, 1979

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#### Limitation on the Right of Reproduction:

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1. *Declaration; Depository and effective date of declaration*

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>2</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 encyclopedias 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.

(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 2bis**

##### **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 11bis (1) of this Convention, when such use is justified by the inforamatory 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 6bis

### 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 7bis**  
**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 10bis

### 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 11bis**

#### **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 11ter

### 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 14bis**

##### **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 14ter**

##### **“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 3:

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 29bis**  
**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 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 4, 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 29bis, 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.

(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.

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<sup>1</sup> This Table of Contents is added for the convenience of the reader. It does not appear in the original (English) text of the Convention.

<sup>2</sup> Each Article and the Appendix have been given titles to facilitate their identification. There are no titles in the signed (English) text.

<sup>3</sup> The Governing Bodies of WIPO and the Unions administered by WIPO adopted with effect from January 1, 1994, a new contribution system that replaces the contribution system set forth in Article 25(4)(a), (b) and (c) of the Berne Convention. Details concerning that system may be obtained from the International Bureau of WIPO.

<sup>4</sup> The text in English of Article 5 of the Berne Convention of 1886, as completed at Paris in 1896 is as follows: "Authors who are nationals of any of the countries of the Union, or their successors in title, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works throughout the term of their right in the original work. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of ten years from the date of the first publication of the original work by publishing or causing to be published, in one of the countries of the Union a translation in the language for which protection is to be claimed."

# **International Convention for the Protection of Performers Producers of Phonograms and Broadcasting Organizations 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:

**Article 1**  
**Safeguard of Copyright Proper <sup>2</sup>**

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.

**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 unfixed 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.

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<sup>1</sup> This Table of Contents is added for the convenience of the reader. It does not appear in the original text of the Convention.

<sup>2</sup> Articles have been given titles to facilitate their identification. There are no titles in the signed text.

# Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite

Done at Brussels on May 21, 1974

The Contracting States,

Aware that the use of satellites for the distribution of programme-carrying signals is rapidly growing both in volume and geographical coverage;

Concerned that there is no world-wide system to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors, and that this lack is likely to hamper the use of satellite communications;

Recognizing, in this respect, the importance of the interests of authors, performers, producers of phonograms and broadcasting organizations;

Convinced that an international system should be established under which measures would be provided to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors;

Conscious of the need not to impair in any way international agreements already in force, including the International Telecommunication Convention and the Radio Regulations annexed to that Convention, and in particular in no way to prejudice wider acceptance of the Rome Convention of October 26, 1961, which affords protection to performers, producers of phonograms and broadcasting organizations,

Have agreed as follows:

## Article 1

For the purposes of this Convention:

- (i) "signal" is an electronically-generated carrier capable of transmitting programmes;
- (ii) "programme" is a body of live or recorded material consisting of images, sounds or both, embodied in signals emitted for the purpose of ultimate distribution;
- (iii) "satellite" is any device in extraterrestrial space capable of transmitting signals;

(iv) “emitted signal” or “signal emitted” is any programme-carrying signal that goes to or passes through a satellite;

(v) “derived signal” is a signal obtained by modifying the technical characteristics of the emitted signal, whether or not there have been one or more intervening fixations;

(vi) “originating organization” is the person or legal entity that decides what programme the emitted signals will carry;

(vii) “distributor” is the person or legal entity that decides that the transmission of the derived signals to the general public or any section thereof should take place;

(viii) “distribution” is the operation by which a distributor transmits derived signals to the general public or any section thereof.

## **Article 2**

(1) Each Contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended. This obligation shall apply where the originating organization is a national of another Contracting State and where the signal distributed is a derived signal.

(2) In any Contracting State in which the application of the measures referred to in paragraph (1) is limited in time, the duration thereof shall be fixed by its domestic law. The Secretary-General of the United Nations shall be notified in writing of such duration at the time of ratification, acceptance or accession, or if the domestic law comes into force or is changed thereafter, within six months of the coming into force of that law or of its modification.

(3) The obligation provided for in paragraph (1) shall not apply to the distribution of derived signals taken from signals which have already been distributed by a distributor for whom the emitted signals were intended.

## **Article 3**

This Convention shall not apply where the signals emitted by or on behalf of the originating organization are intended for direct reception from the satellite by the general public.

#### **Article 4**

No Contracting State shall be required to apply the measures referred to in Article 2(1) where the signal distributed on its territory by a distributor for whom the emitted signal is not intended

(i) carries short excerpts of the programme carried by the emitted signal, consisting of reports of current events, but only to the extent justified by the informatory purpose of such excerpts, or

(ii) carries, as quotations, short excerpts of the programme carried by the emitted signal, provided that such quotations are compatible with fair practice and are justified by the informatory purpose of such quotations, or

(iii) carries, where the said territory is that of a Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, a programme carried by the emitted signal, provided that the distribution is solely for the purpose of teaching, including teaching in the framework of adult education, or scientific research.

#### **Article 5**

No Contracting State shall be required to apply this Convention with respect to any signal emitted before this Convention entered into force for that State.

#### **Article 6**

This Convention shall in no way be interpreted to limit or prejudice the protection secured to authors, performers, producers of phonograms, or broadcasting organizations, under any domestic law or international agreement.

#### **Article 7**

This Convention shall in no way be interpreted as limiting the right of any Contracting State to apply its domestic law in order to prevent abuses of monopoly.

#### **Article 8**

(1) Subject to paragraphs (2) and (3), no reservation to this Convention shall be permitted.

(2) Any Contracting State whose domestic law, on May 21, 1974, so provides may, by a written notification deposited with the Secretary-General of the United Nations, declare that, for its purposes, the words "where the originating organization is a national of another Contracting

State” appearing in Article 2(1) shall be considered as if they were replaced by the words “where the signal is emitted from the territory of another Contracting State.”

(3)

(a) Any Contracting State which, on May 21, 1974, limits or denies protection with respect to the distribution of programme-carrying signals by means of wires, cable or other similar communications channels to subscribing members of the public may, by a written notification deposited with the Secretary-General of the United Nations, declare that, to the extent that and as long as its domestic law limits or denies protection, it will not apply this Convention to such distributions.

(b) Any State that has deposited a notification in accordance with subparagraph (a) shall notify the Secretary-General of the United Nations in writing, within six months of their coming into force, of any changes in its domestic law whereby the reservation under that subparagraph becomes inapplicable or more limited in scope.

#### **Article 9**

(1) This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until March 31, 1975, for signature by any State that is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice.

(2) This Convention shall be subject to ratification or acceptance by the signatory States. It shall be open for accession by any State referred to in paragraph (1).

(3) Instruments of ratification, acceptance or accession shall be deposited with the Secretary-General of the United Nations.

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

#### **Article 10**

(1) This Convention shall enter into force three months after the deposit of the fifth instrument of ratification, acceptance or accession.

(2) For each State ratifying, accepting or acceding to this Convention after the deposit of the fifth instrument of ratification, acceptance or accession, this Convention shall enter into force three months after the deposit of its instrument.

## Article 11

(1) Any Contracting State may denounce this Convention by written notification deposited with the Secretary-General of the United Nations.

(2) Denunciation shall take effect twelve months after the date on which the notification referred to in paragraph (1) is received.

## Article 12

(1) This Convention shall be signed in a single copy in English, French, Russian and Spanish, the four texts being equally authentic.

(2) Official texts shall be established by the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director General of the World Intellectual Property Organization, after consultation with the interested Governments, in the Arabic, Dutch, German, Italian and Portuguese languages.

(3) The Secretary-General of the United Nations shall notify the States referred to in Article 9(1), as well as the Director-General of the United Nations Educational, Scientific and Cultural Organization, the Director General of the World Intellectual Property Organization, the Director-General of the International Labour Office and the Secretary-General of the International Telecommunication Union, of

(i) signatures to this Convention;

(ii) the deposit of instruments of ratification, acceptance or accession;

(iii) the date of entry into force of this Convention under Article 10(1);

(iv) the deposit of any notification relating to Article 2(2) or Article 8(2) or (3), together with its text;

(v) the receipt of notifications of denunciation.

(4) The Secretary-General of the United Nations shall transmit two certified copies of this Convention to all States referred to in Article 9(1)

**WIPO Copyright Treaty**  
**(adopted in Geneva on December 20, 1996)**

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## **Preamble**

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible,

Recognizing the need to introduce new international rules and clarify the interpretation of certain existing rules in order to provide adequate solutions to the questions raised by new economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works,

Emphasizing the outstanding significance of copyright protection as an incentive for literary and artistic creation,

Recognizing the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention,

Have agreed as follows:

## **Article 1**

### **Relation to the Berne Convention**

(1) This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention. This Treaty shall not have any connection with treaties other than the Berne Convention, nor shall it prejudice any rights and obligations under any other treaties.

(2) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the Berne Convention for the Protection of Literary and Artistic Works.

(3) Hereinafter, "Berne Convention" shall refer to the Paris Act of July 24, 1971 of the Berne Convention for the Protection of Literary and Artistic Works.

(4) Contracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention.<sup>1</sup>

## **Article 2**

### **Scope of Copyright Protection**

Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

## **Article 3**

### **Application of Articles 2 to 6 of the Berne Convention**

Contracting Parties shall apply mutatis mutandis the provisions of Articles 2 to 6 of the Berne Convention in respect of the protection provided for in this Treaty.<sup>2</sup>

## **Article 4**

### **Computer Programs**

Computer programs are protected as literary works within the meaning of Article 2 of the Berne Convention. Such protection applies to computer programs, whatever may be the mode or form of their expression.<sup>3</sup>

## **Article 5**

### **Compilations of Data (Databases)**

Compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, are protected as such. This protection does not extend to the data or the material itself and is without prejudice to any copyright subsisting in the data or material contained in the compilation.<sup>4</sup>

## **Article 6**

### **Right of Distribution**

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works through sale or other transfer of ownership.

(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the author.<sup>5</sup>

## **Article 7**

### **Right of Rental**

(1) Authors of

(i) computer programs;

(ii) cinematographic works; and

(iii) works embodied in phonograms, as determined in the national law of Contracting Parties,

shall enjoy the exclusive right of authorizing commercial rental to the public of the originals or copies of their works.

(2) Paragraph (1) shall not apply

(i) in the case of computer programs, where the program itself is not the essential object of the rental; and

(ii) in the case of cinematographic works, unless such commercial rental has led to widespread copying of such works materially impairing the exclusive right of reproduction.

(3) Notwithstanding the provisions of paragraph (1), a Contracting Party that, on April 15, 1994, had and continues to have in force a system of equitable remuneration of authors for the rental of copies of their works embodied in phonograms may maintain that system provided that the commercial rental of works embodied in phonograms is not giving rise to the material impairment of the exclusive right of reproduction of authors.<sup>5,6</sup>

## **Article 8**

### **Right of Communication to the Public**

Without prejudice to the provisions of Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii) and 14bis(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that

members of the public may access these works from a place and at a time individually chosen by them.<sup>7</sup>

## **Article 9**

### **Duration of the Protection of Photographic Works**

In respect of photographic works, the Contracting Parties shall not apply the provisions of Article 7(4) of the Berne Convention.

## **Article 10**

### **Limitations and Exceptions**

(1) Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

(2) Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.<sup>8</sup>

## **Article 11**

### **Obligations concerning Technological Measures**

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.

## **Article 12**

### **Obligations concerning Rights Management Information**

(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty or the Berne Convention:

- (i) to remove or alter any electronic rights management information without authority;

(ii) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.

(2) As used in this Article, “rights management information” means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.<sup>9</sup>

### **Article 13**

#### **Application in Time**

Contracting Parties shall apply the provisions of Article 18 of the Berne Convention to all protection provided for in this Treaty.

### **Article 14**

#### **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 covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

### **Article 15**

#### **Assembly**

(1)

(a) The Contracting Parties shall have an Assembly.

(b) Each Contracting Party 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 Contracting Party that has appointed the delegation. The Assembly may ask the World Intellectual Property Organization (hereinafter referred to as “WIPO”) to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing

countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

(2)

(a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 17(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

(3)

(a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

(4) The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.

(5) The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

## **Article 16**

### **International Bureau**

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

## **Article 17**

### **Eligibility for Becoming Party to the Treaty**

(1) Any Member State of WIPO may become party to this Treaty.

(2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

(3) The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

## **Article 18**

### **Rights and Obligations under the Treaty**

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

## **Article 19**

### **Signature of the Treaty**

This Treaty shall be open for signature until December 31, 1997, by any Member State of WIPO and by the European Community.

## **Article 20**

### **Entry into Force of the Treaty**

This Treaty shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

## **Article 21**

### **Effective Date of Becoming Party to the Treaty**

This Treaty shall bind:

(i) the 30 States referred to in Article 20, from the date on which this Treaty has entered into force;

(ii) each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;

(iii) the European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to Article 20, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;

(iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

## **Article 22**

### **No Reservations to the Treaty**

No reservation to this Treaty shall be admitted.

## **Article 23**

### **Denunciation of the Treaty**

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

## **Article 24**

### **Languages of the Treaty**

(1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

(2) An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, “interested party” means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

## **Article 25**

### **Depositary**

The Director General of WIPO is the depositary of this Treaty.

<sup>1</sup> Agreed statements concerning Article 1(4): The reproduction right, as set out in Article 9 of the Berne Convention, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to the use of works in digital form. It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of Article 9 of the Berne Convention.

<sup>2</sup> Agreed statements concerning Article 3: It is understood that in applying Article 3 of this Treaty, the expression “country of the Union” in Articles 2 to 6 of the Berne Convention will be read as if it were a reference to a Contracting Party to this Treaty, in the application of those Berne Articles in respect of protection provided for in this Treaty. It is also understood that the expression “country outside the Union” in those Articles in the Berne Convention will, in the same circumstances, be read as if it were a reference to a country that is not a Contracting Party to this Treaty, and that “this Convention” in Articles 2(8), 2bis(2), 3, 4 and 5 of the Berne Convention will be read as if it were a reference to the Berne Convention and this Treaty. Finally, it is understood that a reference in Articles 3 to 6 of the Berne Convention to a “national of one of the countries of the Union” will, when these Articles are applied to this Treaty, mean, in regard to an intergovernmental organization that is a Contracting Party to this Treaty, a national of one of the countries that is member of that organization.

<sup>3</sup> Agreed statements concerning Article 4: The scope of protection for computer programs under Article 4 of this Treaty, read with Article 2, is consistent with Article 2 of the Berne Convention and on a par with the relevant provisions of the TRIPS Agreement.

<sup>4</sup> Agreed statements concerning Article 5: The scope of protection for compilations of data (databases) under Article 5 of this Treaty, read with Article 2, is consistent with Article 2 of the Berne Convention and on a par with the relevant provisions of the TRIPS Agreement.

<sup>5</sup> Agreed statements concerning Articles 6 and 7: As used in these Articles, the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

<sup>6</sup> Agreed statements concerning Article 7: It is understood that the obligation under Article 7(1) does not require a Contracting Party to provide an exclusive right of commercial rental to authors who, under that Contracting Party’s law, are not granted rights in respect of phonograms. It is understood that this obligation is consistent with Article 14(4) of the TRIPS Agreement.

<sup>7</sup> Agreed statements concerning Article 8: It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Treaty or the Berne Convention. It is further understood that nothing in Article 8 precludes a Contracting Party from applying Article 11bis(2) .

<sup>8</sup> Agreed statement concerning Article 10: It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.

It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.

<sup>9</sup> Agreed statements concerning Article 12: It is understood that the reference to “infringement of any right covered by this Treaty or the Berne Convention” includes both exclusive rights and rights of remuneration.

It is further understood that Contracting Parties will not rely on this Article to devise or implement rights management systems that would have the effect of imposing formalities which are not permitted under the Berne Convention or this Treaty, prohibiting the free movement of goods or impeding the enjoyment of rights under this Treaty.

**WIPO Performances and Phonograms Treaty (WPPT)**  
**(adopted in Geneva on December 20, 1996)**

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### **Preamble**

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of performers and producers of phonograms in a manner as effective and uniform as possible,

Recognizing the need to introduce new 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 on the production and use of performances and phonograms,

Recognizing the need to maintain a balance between the rights of performers and producers of phonograms and the larger public interest, particularly education, research and access to information,

Have agreed as follows:

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**CHAPTER I**  
**General Provisions**

**Article 1**  
**Relation to Other Conventions**

(1) 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").

(2) Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.<sup>1</sup>

(3) This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.

**Article 2**  
**Definitions**

For the purposes of this Treaty:

(a) "performers" are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

(b) "phonogram" means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;<sup>2</sup>

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

(d) "producer of a phonogram" means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;

(e) "publication" of a fixed performance or a phonogram means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the rightholder, and provided that copies are offered to the public in reasonable quantity;<sup>3</sup>

(f) "broadcasting" means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by

satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

(g) “communication to the public” of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of Article 15, “communication to the public” includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

### **Article 3**

#### **Beneficiaries of Protection under this Treaty<sup>4</sup>**

(1) Contracting Parties shall accord the protection provided under this Treaty to the performers and producers of phonograms who are nationals of other Contracting Parties.

(2) The nationals of other Contracting Parties shall be understood to be those performers or producers of phonograms who would meet the criteria for eligibility for protection provided under the Rome Convention, were all the Contracting Parties to this Treaty Contracting States of that Convention. In respect of these criteria of eligibility, Contracting Parties shall apply the relevant definitions in Article 2 of this Treaty.<sup>5</sup>

(3) Any Contracting Party availing itself of the possibilities provided in Article 5(3) of the Rome Convention or, for the purposes of Article 5 of the same Convention, Article 17 thereof shall make a notification as foreseen in those provisions to the Director General of the World Intellectual Property Organization (WIPO).

### **Article 4**

#### **National Treatment**

(1) Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 3(2), the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty, and to the right to equitable remuneration provided for in Article 15 of this Treaty.

(2) The obligation provided for in paragraph (1) does not apply to the extent that another Contracting Party makes use of the reservations permitted by Article 15(3) of this Treaty.

## **CHAPTER II**

### **Rights of Performers**

#### **Article 5**

#### **Moral Rights of Performers**

(1) Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

(2) The rights granted to a performer in accordance with paragraph (1) 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 Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.

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

#### **Article 6**

#### **Economic Rights of Performers in their Unfixed Performances**

Performers shall enjoy the exclusive right of authorizing, as regards their performances:

- (i) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and
- (ii) the fixation of their unfixed performances.

#### **Article 7**

#### **Right of Reproduction**

Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in phonograms, in any manner or form.<sup>6</sup>

**Article 8**  
**Right of Distribution**

(1) Performers shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their performances fixed in phonograms through sale or other transfer of ownership.

(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer.<sup>3</sup>

**Article 9**  
**Right of Rental**

(1) Performers shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their performances fixed in phonograms as determined in the national law of Contracting Parties, even after distribution of them by, or pursuant to, authorization by the performer.

(2) Notwithstanding the provisions of paragraph (1), a Contracting Party that, on April 15, 1994, had and continues to have in force a system of equitable remuneration of performers for the rental of copies of their performances fixed in phonograms, may maintain that system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive right of reproduction of performers.<sup>3</sup>

**Article 10**  
**Right of Making Available of Fixed Performances**

Performers shall enjoy the exclusive right of authorizing the making available to the public of their performances fixed in phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

**CHAPTER III**  
**Rights of Producers of Phonograms**

**Article 11**  
**Right of Reproduction**

Producers of phonograms shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their phonograms, in any manner or form.<sup>6</sup>

**Article 12**  
**Right of Distribution**

(1) Producers of phonograms shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their phonograms through sale or other transfer of ownership.

(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the phonogram with the authorization of the producer of the phonogram.<sup>3</sup>

**Article 13**  
**Right of Rental**

(1) Producers of phonograms shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their phonograms, even after distribution of them, by or pursuant to, authorization by the producer.

(2) Notwithstanding the provisions of paragraph (1), a Contracting Party that, on April 15, 1994, had and continues to have in force a system of equitable remuneration of producers of phonograms for the rental of copies of their phonograms, may maintain that system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of producers of phonograms.<sup>3</sup>

**Article 14**  
**Right of Making Available of Phonograms**

Producers of phonograms shall enjoy the exclusive right of authorizing the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

## **CHAPTER IV Common Provisions**

### **Article 15 Right to Remuneration for Broadcasting and Communication to the Public**

(1) Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.

(2) Contracting Parties may establish in their national legislation that the single equitable remuneration shall be claimed from the user by the performer or by the producer of a phonogram or by both. Contracting Parties may enact national legislation that, in the absence of an agreement between the performer and the producer of a phonogram, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.

(3) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of paragraph (1) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply these provisions at all.

(4) For the purposes of this Article, phonograms made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they had been published for commercial purposes.<sup>7,8</sup>

### **Article 16 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 performers and producers of phonograms as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

(2) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance or phonogram and do not unreasonably prejudice the legitimate interests of the performer or of the producer of the phonogram.<sup>6,9</sup>

**Article 17**  
**Term of Protection**

(1) The term of protection to be granted to performers under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed in a phonogram.

(2) The term of protection to be granted to producers of phonograms under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the phonogram was published, or failing such publication within 50 years from fixation of the phonogram, 50 years from the end of the year in which the fixation was made.

**Article 18**  
**Obligations concerning Technological Measures**

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law.

**Article 19**  
**Obligations concerning Rights Management Information**

(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:

- (i) to remove or alter any electronic rights management information without authority;
- (ii) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances, copies of fixed performances or phonograms knowing that electronic rights management information has been removed or altered without authority.

(2) As used in this Article, "rights management information" means information which identifies the performer, the performance of the performer, the producer of the phonogram, the phonogram, the owner of any right in the performance or phonogram, or information about the terms and conditions of use of the performance or phonogram, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a

fixed performance or a phonogram or appears in connection with the communication or making available of a fixed performance or a phonogram to the public.<sup>10</sup>

## **Article 20**

### **Formalities**

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

## **Article 21**

### **Reservations**

Subject to the provisions of Article 15(3), no reservations to this Treaty shall be permitted.

## **Article 22**

### **Application in Time**

(1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights of performers and producers of phonograms provided for in this Treaty.

(2) Notwithstanding paragraph (1), a Contracting Party may limit the application of Article 5 of this Treaty to performances which occurred after the entry into force of this Treaty for that Party.

## **Article 23**

### **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 covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

**CHAPTER V**  
**Administrative and Final Clauses**

**Article 24**  
**Assembly**

- (1) (a) The Contracting Parties shall have an Assembly.
    - (b) Each Contracting Party 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 Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.
  - (2) (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.
    - (b) The Assembly shall perform the function allocated to it under Article 26(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.
    - (c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.
  - (3) (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.
    - (b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.
  - (4) The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.
  - (5) The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.
-

**Article 25**  
**International Bureau**

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

**Article 26**  
**Eligibility for Becoming Party to the Treaty**

(1) Any Member State of WIPO may become party to this Treaty.

(2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

(3) The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

**Article 27**  
**Rights and Obligations under the Treaty**

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

**Article 28**  
**Signature of the Treaty**

This Treaty shall be open for signature until December 31, 1997, by any Member State of WIPO and by the European Community.

**Article 29**  
**Entry into Force of the Treaty**

This Treaty shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

**Article 30**  
**Effective Date of Becoming Party to the Treaty**

This Treaty shall bind:

- (i) the 30 States referred to in Article 29, from the date on which this Treaty has entered into force;
- (ii) each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- (iii) the European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to Article 29, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;
- (iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

**Article 31**  
**Denunciation of the Treaty**

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

**Article 32**  
**Languages of the Treaty**

(1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

(2) An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

### **Article 33** **Depositary**

The Director General of WIPO is the depositary of this Treaty.

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<sup>1</sup> Agreed statement concerning Article 1(2): It is understood that Article 1(2) clarifies the relationship between rights in phonograms under this Treaty and copyright in works embodied in the phonograms. In cases where authorization is needed from both the author of a work embodied in the phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required, and vice versa.

It is further understood that nothing in Article 1(2) precludes a Contracting Party from providing exclusive rights to a performer or producer of phonograms beyond those required to be provided under this Treaty.

<sup>2</sup> Agreed statement concerning Article 2(b): It is understood that the definition of phonogram provided in Article 2(b) does not suggest that rights in the phonogram are in any way affected through their incorporation into a cinematographic or other audiovisual work.

<sup>3</sup> Agreed statement concerning Articles 2(e), 8, 9, 12, and 13: As used in these Articles, the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

<sup>4</sup> Agreed statement concerning Article 3: It is understood that the reference in Articles 5(a) and 16(a)(iv) of the Rome Convention to “national of another Contracting State” will, when applied to this Treaty, mean, in regard to an intergovernmental organization that is a Contracting Party to this Treaty, a national of one of the countries that is a member of that organization.

<sup>5</sup> Agreed statement concerning Article 3(2): For the application of Article 3(2), it is understood that fixation means the finalization of the master tape (“bande-mère”).

<sup>6</sup> Agreed statement concerning Articles 7, 11 and 16: The reproduction right, as set out in Articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

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<sup>7</sup> Agreed statement concerning Article 15: It is understood that Article 15 does not represent a complete resolution of the level of rights of broadcasting and communication to the public that should be enjoyed by performers and phonogram producers in the digital age. Delegations were unable to achieve consensus on differing proposals for aspects of exclusivity to be provided in certain circumstances or for rights to be provided without the possibility of reservations, and have therefore left the issue to future resolution.

<sup>8</sup> Agreed statement concerning Article 15: It is understood that Article 15 does not prevent the granting of the right conferred by this Article to performers of folklore and producers of phonograms recording folklore where such phonograms have not been published for commercial gain.

<sup>9</sup> Agreed statement concerning Article 16: The agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty is applicable mutatis mutandis also to Article 16 (on Limitations and Exceptions) of the WIPO Performances and Phonograms Treaty.

[The text of the agreed statement concerning Article 10 of the WCT reads as follows: “It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.

“It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.”]

<sup>10</sup> Agreed statement concerning Article 19: The agreed statement concerning Article 12 (on Obligations concerning Rights Management Information) of the WIPO Copyright Treaty is applicable mutatis mutandis also to Article 19 (on Obligations concerning Rights Management Information) of the WIPO Performances and Phonograms Treaty.

[The text of the agreed statement concerning Article 12 of the WCT reads as follows: “It is understood that the reference to ‘infringement of any right covered by this Treaty or the Berne Convention’ includes both exclusive rights and rights of remuneration.

“It is further understood that Contracting Parties will not rely on this Article to devise or implement rights management systems that would have the effect of imposing formalities which are not permitted under the Berne Convention or this Treaty, prohibiting the free movement of goods or impeding the enjoyment of rights under this Treaty.”]

# Beijing Treaty on Audiovisual Performance

(adopted by the Diplomatic Conference on the Protection of Audiovisual Performances in Beijing, on June 24, 2012)

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### **Preamble**

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of performers in their audiovisual performances in a manner as effective and uniform as possible,

Recalling the importance of the Development Agenda recommendations, adopted in 2007 by the General Assembly of the Convention Establishing the World Intellectual Property Organization (WIPO), which aim to ensure that development considerations form an integral part of the Organization's work,

Recognizing the need to introduce new 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 on the production and use of audiovisual performances,

Recognizing the need to maintain a balance between the rights of performers in their audiovisual performances and the larger public interest, particularly education, research and access to information,

Recognizing that the WIPO Performances and Phonograms Treaty (WPPT) done in Geneva on December 20, 1996, does not extend protection to performers in respect of their performances fixed in audiovisual fixations,

Referring to the Resolution concerning Audiovisual Performances adopted by the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions on December 20, 1996,

Have agreed as follows:

## **Article 1**

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

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

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

(3) This Treaty shall not have any connection with treaties other than the WPPT, nor shall it prejudice any rights and obligations under any other treaties <sup>[1],[2]</sup>.

## **Article 2**

### **Definitions**

For the purposes of this Treaty:

(a) "performers" are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore <sup>[3]</sup>;

(b) "audiovisual fixation" means the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device <sup>[4]</sup>;

(c) "broadcasting" means the transmission by wireless means for public reception of sounds or of images or of images and sounds or of the representations thereof; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

(d) "communication to the public" of a performance means the transmission to the public by any medium, otherwise than by broadcasting, of an unfixed performance, or of a performance fixed in an audiovisual fixation. For the purposes of Article 11, "communication to the public" includes making a performance fixed in an audiovisual fixation audible or visible or audible and visible to the public.

**Article 3**  
**Beneficiaries of Protection**

(1) Contracting Parties shall accord the protection granted under this Treaty to performers who are nationals of other Contracting Parties.

(2) Performers who are not nationals of one of the Contracting Parties but who have their habitual residence in one of them shall, for the purposes of this Treaty, be assimilated to nationals of that Contracting Party.

**Article 4**  
**National Treatment**

(1) Each Contracting Party shall accord to nationals of other Contracting Parties the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty and the right to equitable remuneration provided for in Article 11 of this Treaty.

(2) A Contracting Party shall be entitled to limit the extent and term of the protection accorded to nationals of another Contracting Party under paragraph (1), with respect to the rights granted in Article 11(1) and 11(2) of this Treaty, to those rights that its own nationals enjoy in that other Contracting Party.

(3) The obligation provided for in paragraph (1) does not apply to a Contracting Party to the extent that another Contracting Party makes use of the reservations permitted by Article 11(3) of this Treaty, nor does it apply to a Contracting Party, to the extent that it has made such reservation.

**Article 5**  
**Moral Rights**

(1) Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live performances or performances fixed in audiovisual fixations, have the right:

(i) to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; and

(ii) to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation, taking due account of the nature of audiovisual fixations.

(2) The rights granted to a performer in accordance with paragraph (1) 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 Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed <sup>[5]</sup>.

### **Article 6** **Economic Rights of Performers in their Unfixed Performances**

Performers shall enjoy the exclusive right of authorizing, as regards their performances:

- (i) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and
- (ii) the fixation of their unfixed performances.

### **Article 7** **Right of Reproduction**

Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in audiovisual fixations, in any manner or form <sup>[6]</sup>.

### **Article 8** **Right of Distribution**

(1) Performers shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their performances fixed in audiovisual fixations through sale or other transfer of ownership.

(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer <sup>[7]</sup>.

**Article 9**  
**Right of Rental**

(1) Performers shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their performances fixed in audiovisual fixations as determined in the national law of Contracting Parties, even after distribution of them by, or pursuant to, authorization by the performer.

(2) Contracting Parties are exempt from the obligation of paragraph (1) unless the commercial rental has led to widespread copying of such fixations materially impairing the exclusive right of reproduction of performers <sup>[7]</sup>.

**Article 10**  
**Right of Making Available of Fixed Performances**

Performers shall enjoy the exclusive right of authorizing the making available to the public of their performances fixed in audiovisual fixations, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

**Article 11**  
**Right of Broadcasting and Communication to the Public**

(1) Performers shall enjoy the exclusive right of authorizing the broadcasting and communication to the public of their performances fixed in audiovisual fixations.

(2) Contracting Parties may in a notification deposited with the Director General of WIPO declare that, instead of the right of authorization provided for in paragraph (1), they will establish a right to equitable remuneration for the direct or indirect use of performances fixed in audiovisual fixations for broadcasting or for communication to the public. Contracting Parties may also declare that they will set conditions in their legislation for the exercise of the right to equitable remuneration.

(3) Any Contracting Party may declare that it will apply the provisions of paragraphs (1) or (2) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply the provisions of paragraphs (1) and (2) at all.

## **Article 12**

### **Transfer of Rights**

(1) A Contracting Party may provide in its national law that once a performer has consented to fixation of his or her performance in an audiovisual fixation, the exclusive rights of authorization provided for in Articles 7 to 11 of this Treaty shall be owned or exercised by or transferred to the producer of such audiovisual fixation subject to any contract to the contrary between the performer and the producer of the audiovisual fixation as determined by the national law.

(2) A Contracting Party may require with respect to audiovisual fixations produced under its national law that such consent or contract be in writing and signed by both parties to the contract or by their duly authorized representatives.

(3) Independent of the transfer of exclusive rights described above, national laws or individual, collective or other agreements may provide the performer with the right to receive royalties or equitable remuneration for any use of the performance, as provided for under this Treaty including as regards Articles 10 and 11.

## **Article 13**

### **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 performers as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

(2) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance and do not unreasonably prejudice the legitimate interests of the performer <sup>[8]</sup>.

## **Article 14**

### **Term of Protection**

The term of protection to be granted to performers under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed.

**Article 15**  
**Obligations concerning Technological Measures**

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances, which are not authorized by the performers concerned or permitted by law<sup>[9], [10]</sup>.

**Article 16**  
**Obligations concerning Rights Management Information**

(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right covered by this Treaty:

- (i) to remove or alter any electronic rights management information without authority;
- (ii) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances or copies of performances fixed in audiovisual fixations knowing that electronic rights management information has been removed or altered without authority.

(2) As used in this Article, "rights management information" means information which identifies the performer, the performance of the performer, or the owner of any right in the performance, or information about the terms and conditions of use of the performance, and any numbers or codes that represent such information, when any of these items of information is attached to a performance fixed in an audiovisual fixation<sup>[11]</sup>.

**Article 17**  
**Formalities**

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

**Article 18**  
**Reservations and Notifications**

(1) Subject to provisions of Article 11(3), no reservations to this Treaty shall be permitted.

(2) Any notification under Article 11(2) or 19(2) may be made in instruments of ratification or accession, and the effective date of the notification shall be the same as the date of entry into force of this Treaty with respect to the Contracting Party having made the notification. Any such notification may also be made later, in which case the notification shall have effect three months after its receipt by the Director General of WIPO or at any later date indicated in the notification.

## **Article 19**

### **Application in Time**

(1) Contracting Parties shall accord the protection granted under this Treaty to fixed performances that exist at the moment of the entry into force of this Treaty and to all performances that occur after the entry into force of this Treaty for each Contracting Party.

(2) Notwithstanding the provisions of paragraph (1), a Contracting Party may declare in a notification deposited with the Director General of WIPO that it will not apply the provisions of Articles 7 to 11 of this Treaty, or any one or more of those, to fixed performances that existed at the moment of the entry into force of this Treaty for each Contracting Party. In respect of such Contracting Party, other Contracting Parties may limit the application of the said Articles to performances that occurred after the entry into force of this Treaty for that Contracting Party.

(3) 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.

(4) Contracting Parties may in their legislation establish transitional provisions under which any person who, prior to the entry into force of this Treaty, engaged in lawful acts with respect to a performance, may undertake with respect to the same performance acts within the scope of the rights provided for in Articles 5 and 7 to 11 after the entry into force of this Treaty for the respective Contracting Parties.

## **Article 20**

### **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 covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

## **Article 21**

### **Assembly**

- (1) (a) The Contracting Parties shall have an Assembly.
    - (b) Each Contracting Party shall be represented in the Assembly by one delegate who may be assisted by alternate delegates, advisors and experts.
    - (c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.
  - (2) (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.
    - (b) The Assembly shall perform the function allocated to it under Article 23(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.
    - (c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.
  - (3) (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.
    - (b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.
  - (4) The Assembly shall meet 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 WIPO.
  - (5) The Assembly shall endeavor to take its decisions by consensus and shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.
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**Article 22**  
**International Bureau**

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

**Article 23**  
**Eligibility for Becoming Party to the Treaty**

(1) Any Member State of WIPO may become party to this Treaty.

(2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

(3) The European Union, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

**Article 24**  
**Rights and Obligations under the Treaty**

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

**Article 25**  
**Signature of the Treaty**

This Treaty shall be open for signature at the headquarters of WIPO by any eligible party for one year after its adoption.

**Article 26**  
**Entry into Force of the Treaty**

This Treaty shall enter into force three months after 30 eligible parties referred to in Article 23 have deposited their instruments of ratification or accession.

**Article 27**  
**Effective Date of Becoming Party to the Treaty**

This Treaty shall bind:

- (i) the 30 eligible parties referred to in Article 26, from the date on which this Treaty has entered into force;
- (ii) each other eligible party referred to in Article 23, from the expiration of three months from the date on which it has deposited its instrument of ratification or accession with the Director General of WIPO.

**Article 28**  
**Denunciation of the Treaty**

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

**Article 29**  
**Languages of the Treaty**

(1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

(2) An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Union, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

**Article 30**  
**Depositary**

The Director General of WIPO is the depositary of this Treaty.

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<sup>1</sup> Agreed statement concerning Article 1: It is understood that nothing in this Treaty affects any rights or obligations under the WIPO Performances and Phonograms Treaty (WPPT) or their

interpretation and it is further understood that paragraph 3 does not create any obligations for a Contracting Party to this Treaty to ratify or accede to the WPPT or to comply with any of its provisions.

<sup>2</sup> Agreed statement concerning Article 1(3): It is understood that Contracting Parties who are members of the World Trade Organization (WTO) acknowledge all the principles and objectives of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and understand that nothing in this Treaty affects the provisions of the TRIPS Agreement, including, but not limited to, the provisions relating to anti-competitive practices.

<sup>3</sup> Agreed statement concerning Article 2(a): It is understood that the definition of "performers" includes those who perform a literary or artistic work that is created or first fixed in the course of a performance.

<sup>4</sup> Agreed statement concerning Article 2(b): It is hereby confirmed that the definition of "audiovisual fixation" contained in Article 2(b) is without prejudice to Article 2(c) of the WPPT.

<sup>5</sup> Agreed statement concerning Article 5: For the purposes of this Treaty and without prejudice to any other treaty, it is understood that, considering the nature of audiovisual fixations and their production and distribution, modifications of a performance that are made in the normal course of exploitation of the performance, such as editing, compression, dubbing, or formatting, in existing or new media or formats, and that are made in the course of a use authorized by the performer, would not in themselves amount to modifications within the meaning of Article 5(1)(ii). Rights under Article 5(1)(ii) are concerned only with changes that are objectively prejudicial to the performer's reputation in a substantial way. It is also understood that the mere use of new or changed technology or media, as such, does not amount to modification within the meaning of Article 5(1)(ii).

<sup>6</sup> Agreed statement concerning Article 7: The reproduction right, as set out in Article 7, and the exceptions permitted thereunder through Article 13, fully apply in the digital environment, in particular to the use of performances in digital form. It is understood that the storage of a protected performance in digital form in an electronic medium constitutes a reproduction within the meaning of this Article.

<sup>7</sup> Agreed statement concerning Articles 8 and 9: As used in these Articles, the expression "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refers exclusively to fixed copies that can be put into circulation as tangible objects.

<sup>8</sup> Agreed statement concerning Article 13: The Agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty (WCT) is applicable *mutatis mutandis* also to Article 13 (on Limitations and Exceptions) of the Treaty.

<sup>9</sup> Agreed statement concerning Article 15 as it relates to Article 13: It is understood that nothing in this Article prevents a Contracting Party from adopting effective and necessary measures to

ensure that a beneficiary may enjoy limitations and exceptions provided in that Contracting Party's national law, in accordance with Article 13, where technological measures have been applied to an audiovisual performance and the beneficiary has legal access to that performance, in circumstances such as where appropriate and effective measures have not been taken by rights holders in relation to that performance to enable the beneficiary to enjoy the limitations and exceptions under that Contracting Party's national law. Without prejudice to the legal protection of an audiovisual work in which a performance is fixed, it is further understood that the obligations under Article 15 are not applicable to performances unprotected or no longer protected under the national law giving effect to this Treaty.

<sup>10</sup> Agreed statement concerning Article 15: The expression "technological measures used by performers" should, as this is the case regarding the WPPT, be construed broadly, referring also to those acting on behalf of performers, including their representatives, licensees or assignees, including producers, service providers, and persons engaged in communication or broadcasting using performances on the basis of due authorization.

<sup>11</sup> Agreed statement concerning Article 16: The Agreed statement concerning Article 12 (on Obligations concerning Rights Management Information) of the WCT is applicable *mutatis mutandis* also to Article 16 (on Obligations concerning Rights Management Information) of the Treaty.

# **Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled**

**(adopted by the Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities in Marrakesh, on June 27, 2013)**

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## **Preamble**

The Contracting Parties,

Recalling the principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society, proclaimed in the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities,

Mindful of the challenges that are prejudicial to the complete development of persons with visual impairments or with other print disabilities, which limit their freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds on an equal basis with others, including through all forms of communication of their choice, their enjoyment of the right to education, and the opportunity to conduct research,

Emphasizing the importance of copyright protection as an incentive and reward for literary and artistic creations and of enhancing opportunities for everyone, including persons with visual impairments or with other print disabilities, to participate in the cultural life of the community, to enjoy the arts and to share scientific progress and its benefits,

Aware of the barriers of persons with visual impairments or with other print disabilities to access published works in achieving equal opportunities in society, and the need to both expand the number of works in accessible formats and to improve the circulation of such works,

Taking into account that the majority of persons with visual impairments or with other print disabilities live in developing and least-developed countries,

Recognizing that, despite the differences in national copyright laws, the positive impact of new information and communication technologies on the lives of persons with visual impairments or with other print disabilities may be reinforced by an enhanced legal framework at the international level,

Recognizing that many Member States have established limitations and exceptions in their national copyright laws for persons with visual impairments or with other print disabilities, yet there is a continuing shortage of available works in accessible format copies for such persons, and that considerable resources are required for their effort of making works accessible to these

persons, and that the lack of possibilities of cross-border exchange of accessible format copies has necessitated duplication of these efforts,

Recognizing both the importance of rightholders' role in making their works accessible to persons with visual impairments or with other print disabilities and the importance of appropriate limitations and exceptions to make works accessible to these persons, particularly when the market is unable to provide such access,

Recognizing the need to maintain a balance between the effective protection of the rights of authors and the larger public interest, particularly education, research and access to information, and that such a balance must facilitate effective and timely access to works for the benefit of persons with visual impairments or with other print disabilities,

Reaffirming the obligations of Contracting Parties under the existing international treaties on the protection of copyright and the importance and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works and other international instruments,

Recalling the importance of the Development Agenda recommendations, adopted in 2007 by the General Assembly of the World Intellectual Property Organization (WIPO), which aim to ensure that development considerations form an integral part of the Organization's work,

Recognizing the importance of the international copyright system and desiring to harmonize limitations and exceptions with a view to facilitating access to and use of works by persons with visual impairments or with other print disabilities,

Have agreed as follows:

## **Article 1**

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

Nothing in this Treaty shall derogate from any obligations that Contracting Parties have to each other under any other treaties, nor shall it prejudice any rights that a Contracting Party has under any other treaties.

## **Article 2**

### **Definitions**

For the purposes of this Treaty:

(a) "works" means literary and artistic works within the meaning of Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works, in the form of text,

notation and/or related illustrations, whether published or otherwise made publicly available in any media <sup>[1]</sup>;

(b) "accessible format copy" means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability. The accessible format copy is used exclusively by beneficiary persons and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons;

(c) "authorized entity" means an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations <sup>[2]</sup>.

An authorized entity establishes and follows its own practices:

- (i) to establish that the persons it serves are beneficiary persons;
- (ii) to limit to beneficiary persons and/or authorized entities its distribution and making available of accessible format copies;
- (iii) to discourage the reproduction, distribution and making available of unauthorized copies; and
- (iv) to maintain due care in, and records of, its handling of copies of works, while respecting the privacy of beneficiary persons in accordance with Article 8.

### **Article 3** **Beneficiary Persons**

A beneficiary person is a person who:

- (a) is blind;
- (b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or <sup>[3]</sup>

(c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading; regardless of any other disabilities.

#### **Article 4**

##### **National Law Limitations and Exceptions Regarding Accessible Format Copies**

1.

(a) Contracting Parties shall provide in their national copyright laws for a limitation or exception to the right of reproduction, the right of distribution, and the right of making available to the public as provided by the WIPO Copyright Treaty (WCT), to facilitate the availability of works in accessible format copies for beneficiary persons. The limitation or exception provided in national law should permit changes needed to make the work accessible in the alternative format.

(b) Contracting Parties may also provide a limitation or exception to the right of public performance to facilitate access to works for beneficiary persons.

2. A Contracting Party may fulfill Article 4(1) for all rights identified therein by providing a limitation or exception in its national copyright law such that:

(a) Authorized entities shall be permitted, without the authorization of the copyright rightholder, to make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply those copies to beneficiary persons by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, when all of the following conditions are met:

(i) the authorized entity wishing to undertake said activity has lawful access to that work or a copy of that work;

(ii) the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to the beneficiary person;

(iii) such accessible format copies are supplied exclusively to be used by beneficiary persons; and

(iv) the activity is undertaken on a non-profit basis;

and

(b) A beneficiary person, or someone acting on his or her behalf including a primary caretaker or caregiver, may make an accessible format copy of a work for the personal use of the beneficiary person or otherwise may assist the beneficiary person to make and use accessible format copies where the beneficiary person has lawful access to that work or a copy of that work.

3. A Contracting Party may fulfill Article 4(1) by providing other limitations or exceptions in its national copyright law pursuant to Articles 10 and 11 <sup>[4]</sup>.

4. A Contracting Party may confine limitations or exceptions under this Article to works which, in the particular accessible format, cannot be obtained commercially under reasonable terms for beneficiary persons in that market. Any Contracting Party availing itself of this possibility shall so declare in a notification deposited with the Director General of WIPO at the time of ratification of, acceptance of or accession to this Treaty or at any time thereafter <sup>[5]</sup>.

5. It shall be a matter for national law to determine whether limitations or exceptions under this Article are subject to remuneration.

## **Article 5**

### **Cross-Border Exchange of Accessible Format Copies**

1. Contracting Parties shall provide that if an accessible format copy is made under a limitation or exception or pursuant to operation of law, that accessible format copy may be distributed or made available by an authorized entity to a beneficiary person or an authorized entity in another Contracting Party <sup>[6]</sup>.

2. A Contracting Party may fulfill Article 5(1) by providing a limitation or exception in its national copyright law such that:

(a) authorized entities shall be permitted, without the authorization of the rightholder, to distribute or make available for the exclusive use of beneficiary persons accessible format copies to an authorized entity in another Contracting Party; and

(b) authorized entities shall be permitted, without the authorization of the rightholder and pursuant to Article 2(c), to distribute or make available accessible format copies to a beneficiary person in another Contracting Party; provided that prior to the distribution or making available the originating authorized entity did not know or have reasonable grounds to know that the accessible format copy would be used for other than beneficiary persons <sup>[7]</sup>.

3. A Contracting Party may fulfill Article 5(1) by providing other limitations or exceptions in its national copyright law pursuant to Articles 5(4), 10 and 11.

4.

(a) When an authorized entity in a Contracting Party receives accessible format copies pursuant to Article 5(1) and that Contracting Party does not have obligations under Article 9 of the Berne Convention, it will ensure, consistent with its own legal system and practices, that the accessible format copies are only reproduced, distributed or made available for the benefit of beneficiary persons in that Contracting Party's jurisdiction.

(b) The distribution and making available of accessible format copies by an authorized entity pursuant to Article 5(1) shall be limited to that jurisdiction unless the Contracting Party is a Party to the WIPO Copyright Treaty or otherwise limits limitations and exceptions implementing this Treaty to the right of distribution and the right of making available to the public 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 rightholder <sup>[8]</sup> <sup>[9]</sup>.

(c) Nothing in this Article affects the determination of what constitutes an act of distribution or an act of making available to the public.

5. Nothing in this Treaty shall be used to address the issue of exhaustion of rights.

## **Article 6**

### **Importation of Accessible Format Copies**

To the extent that the national law of a Contracting Party would permit a beneficiary person, someone acting on his or her behalf, or an authorized entity, to make an accessible format copy of a work, the national law of that Contracting Party shall also permit them to import an accessible format copy for the benefit of beneficiary persons, without the authorization of the rightholder <sup>[10]</sup>.

## **Article 7**

### **Obligations Concerning Technological Measures**

Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty <sup>[11]</sup>.

## **Article 8**

### **Respect for Privacy**

In the implementation of the limitations and exceptions provided for in this Treaty, Contracting Parties shall endeavor to protect the privacy of beneficiary persons on an equal basis with others.

## **Article 9**

### **Cooperation to Facilitate Cross-Border Exchange**

1. Contracting Parties shall endeavor to foster the cross-border exchange of accessible format copies by encouraging the voluntary sharing of information to assist authorized entities in identifying one another. The International Bureau of WIPO shall establish an information access point for this purpose.

2. Contracting Parties undertake to assist their authorized entities engaged in activities under Article 5 to make information available regarding their practices pursuant to Article 2(c), both through the sharing of information among authorized entities, and through making available information on their policies and practices, including related to cross-border exchange of accessible format copies, to interested parties and members of the public as appropriate.

3. The International Bureau of WIPO is invited to share information, where available, about the functioning of this Treaty.

4. Contracting Parties recognize the importance of international cooperation and its promotion, in support of national efforts for realization of the purpose and objectives of this Treaty <sup>[12]</sup>.

## **Article 10**

### **General Principles on Implementation**

1. Contracting Parties undertake to adopt the measures necessary to ensure the application of this Treaty.

2. Nothing shall prevent Contracting Parties from determining the appropriate method of implementing the provisions of this Treaty within their own legal system and practice <sup>[13]</sup>.

3. Contracting Parties may fulfill their rights and obligations under this Treaty through limitations or exceptions specifically for the benefit of beneficiary persons, other limitations or exceptions, or a combination thereof, within their national legal system and practice. These may

include judicial, administrative or regulatory determinations for the benefit of beneficiary persons as to fair practices, dealings or uses to meet their needs consistent with the Contracting Parties' rights and obligations under the Berne Convention, other international treaties, and Article 11.

### **Article 11**

#### **General Obligations on Limitations and Exceptions**

In adopting measures necessary to ensure the application of this Treaty, a Contracting Party may exercise the rights and shall comply with the obligations that that Contracting Party has under the Berne Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, including their interpretative agreements so that:

- (a) in accordance with Article 9(2) of the Berne Convention, a Contracting Party may permit the reproduction of 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;
- (b) in accordance with Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, a Contracting Party 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 rightholder;
- (c) in accordance with Article 10(1) of the WIPO Copyright Treaty, a Contracting Party may provide for limitations of or exceptions to the rights granted to authors under the WCT in certain special cases, that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author;
- (d) in accordance with Article 10(2) of the WIPO Copyright Treaty, a Contracting Party shall confine, when applying the Berne Convention, any limitations of or exceptions to rights to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

### **Article 12**

#### **Other Limitations and Exceptions**

1. Contracting Parties recognize that a Contracting Party may implement in its national law other copyright limitations and exceptions for the benefit of beneficiary persons than are provided by this Treaty having regard to that Contracting Party's economic situation, and its social and cultural needs, in conformity with that Contracting Party's international rights and

obligations, and in the case of a least-developed country taking into account its special needs and its particular international rights and obligations and flexibilities thereof.

2. This Treaty is without prejudice to other limitations and exceptions for persons with disabilities provided by national law.

### **Article 13**

#### **Assembly**

1.

(a) The Contracting Parties shall have an Assembly.

(b) Each Contracting Party shall be represented in the Assembly by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

2.

(a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 15 in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

3.

(a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

4. The Assembly shall meet 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 WIPO.

5. The Assembly shall endeavor to take its decisions by consensus and shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

#### **Article 14**

##### **International Bureau**

The International Bureau of WIPO shall perform the administrative tasks concerning this Treaty.

#### **Article 15**

##### **Eligibility for Becoming Party to the Treaty**

1. Any Member State of WIPO may become party to this Treaty.

2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

3. The European Union, having made the declaration referred to in the preceding paragraph at the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

#### **Article 16**

##### **Rights and Obligations Under the Treaty**

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

#### **Article 17**

##### **Signature of the Treaty**

This Treaty shall be open for signature at the Diplomatic Conference in Marrakesh, and thereafter at the headquarters of WIPO by any eligible party for one year after its adoption.

**Article 18**  
**Entry into Force of the Treaty**

This Treaty shall enter into force three months after 20 eligible parties referred to in Article 15 have deposited their instruments of ratification or accession.

**Article 19**  
**Effective Date of Becoming Party to the Treaty**

This Treaty shall bind:

- (a) the 20 eligible parties referred to in Article 18, from the date on which this Treaty has entered into force;
- (b) each other eligible party referred to in Article 15, from the expiration of three months from the date on which it has deposited its instrument of ratification or accession with the Director General of WIPO.

**Article 20**  
**Denunciation of the Treaty**

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

**Article 21**  
**Languages of the Treaty**

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.
2. An official text in any language other than those referred to in Article 21(1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Union, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

## Article 22 Depositary

The Director General of WIPO is the depositary of this Treaty.

Done in Marrakesh on the 27th day of June, 2013.

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<sup>1</sup> Agreed statement concerning Article 2(a): For the purposes of this Treaty, it is understood that this definition includes such works in audio form, such as audiobooks.

<sup>2</sup> Agreed statement concerning Article 2(c): For the purposes of this Treaty, it is understood that "entities recognized by the government" may include entities receiving financial support from the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis.

<sup>3</sup> Agreed statement concerning Article 3(b): Nothing in this language implies that "cannot be improved" requires the use of all possible medical diagnostic procedures and treatments.

<sup>4</sup> Agreed statement concerning Article 4(3): It is understood that this paragraph neither reduces nor extends the scope of applicability of limitations and exceptions permitted under the Berne Convention, as regards the right of translation, with respect to persons with visual impairments or with other print disabilities.

<sup>5</sup> Agreed statement concerning Article 4(4): It is understood that a commercial availability requirement does not prejudice whether or not a limitation or exception under this Article is consistent with the three-step test.

<sup>6</sup> Agreed statement concerning Article 5(1): It is further understood that nothing in this Treaty reduces or extends the scope of exclusive rights under any other treaty.

<sup>7</sup> Agreed statement concerning Article 5(2): It is understood that, to distribute or make available accessible format copies directly to a beneficiary person in another Contracting Party, it may be appropriate for an authorized entity to apply further measures to confirm that the person it is serving is a beneficiary person and to follow its own practices as described in Article 2(c).

<sup>8</sup> Agreed statement concerning Article 5(4)(b): It is understood that nothing in this Treaty requires or implies that a Contracting Party adopt or apply the three-step test beyond its obligations under this instrument or under other international treaties.

<sup>9</sup> Agreed statement concerning Article 5(4)(b): It is understood that nothing in this Treaty creates any obligations for a Contracting Party to ratify or accede to the WCT or to comply with any of

its provisions and nothing in this Treaty prejudices any rights, limitations and exceptions contained in the WCT.

<sup>10</sup> Agreed statement concerning Article 6: It is understood that the Contracting Parties have the same flexibilities set out in Article 4 when implementing their obligations under Article 6.

<sup>11</sup> Agreed statement concerning Article 7: It is understood that authorized entities, in various circumstances, choose to apply technological measures in the making, distribution and making available of accessible format copies and nothing herein disturbs such practices when in accordance with national law.

<sup>12</sup> Agreed statement concerning Article 9: It is understood that Article 9 does not imply mandatory registration for authorized entities nor does it constitute a precondition for authorized entities to engage in activities recognized under this Treaty; but it provides for a possibility for sharing information to facilitate the cross-border exchange of accessible format copies.

<sup>13</sup> Agreed statement concerning Article 10(2): It is understood that when a work qualifies as a work under Article 2(a), including such works in audio form, the limitations and exceptions provided for by this Treaty apply *mutatis mutandis* to related rights as necessary to make the accessible format copy, to distribute it and to make it available to beneficiary persons.

**World Trade Organization (WTO)**  
**Agreement on Trade-Related Aspects of**  
**Intellectual Property Rights (TRIPS Agreement)**  
**(1994)**

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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 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.

### **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.

**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 on 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 10bis of the Paris Convention (1967).

3. 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.

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 public order 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 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.

### **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;

(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:

(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 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 10bis 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 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 grant-back 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 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 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 willful 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 willfully 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 6ter 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.

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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.

<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.

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

<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.

<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.

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

<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.

<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.

<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.

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

<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.

**Agreement Between the  
World Intellectual Property Organization  
and the  
World Trade Organization<sup>1</sup>  
(of December 22, 1995)**

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**Preamble**

The World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO),

Desiring to establish a mutually supportive relationship between them, and with a view to establishing appropriate arrangements for cooperation between them,

Agree as follows:

**Article 1**

**Abbreviated Expressions**

For the purposes of this Agreement:

(i) “WIPO” means the World Intellectual Property Organization;

(ii) “WTO” means the World Trade Organization;

(iii) “International Bureau” means the International Bureau of WIPO;

(iv) “WTO Member” means a party to the Agreement Establishing the World Trade Organization;

(v) “the TRIPS Agreement” means the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C to the Agreement Establishing the World Trade Organization;

(vi) “Paris Convention” means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised;

(vii) “Paris Convention (1967)” means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967;

(viii) “emblem” means, in the case of a WTO Member, any armorial bearing, flag and other State emblem of that WTO Member, or any official sign or hallmark indicating control and warranty adopted by it, and, in the case of an international intergovernmental organization, any armorial bearing, flag, other emblem, abbreviation or name of that organization.

## **Article 2**

### **Laws and Regulations**

(1) [Accessibility of Laws and Regulations in the WIPO Collection by WTO Members and Their Nationals] The International Bureau shall, on request, furnish to WTO Members and to nationals of WTO Members copies of laws and regulations, and copies of translations thereof, that exist in its collection, on the same terms as apply to the Member States of WIPO and to nationals of the Member States of WIPO, respectively.

(2) [Accessibility of the Computerized Database] WTO Members and nationals of WTO Members shall have access, on the same terms as apply to the Member States of WIPO and to nationals of the Member States of WIPO, respectively, to any computerized database of the International Bureau containing laws and regulations. The WTO Secretariat shall have access, free of any charge by WIPO, to any such database.

(3) [Accessibility of Laws and Regulations in the WIPO Collection by the WTO Secretariat and the Council for TRIPS]

(a) Where, on the date of its initial notification of a law or regulation under Article 63.2 of the TRIPS Agreement, a WTO Member has already communicated that law or regulation, or a translation thereof, to the International Bureau and that WTO Member has sent to the WTO Secretariat a statement to that effect, and that law, regulation or translation actually exists in the collection of the International Bureau, the International Bureau shall, on

request of the WTO Secretariat, give, free of charge, a copy of the said law, regulation or translation to the WTO Secretariat.

(b) Furthermore, if, for the purposes of carrying out its obligations under Article 68 of the TRIPS Agreement, such as monitoring the operation of the TRIPS Agreement or providing assistance in the context of dispute settlement procedures, the Council for TRIPS of the WTO requires a copy of a law or regulation, or a copy of a translation thereof, which had not previously been given to the WTO Secretariat under subparagraph (a), and which exists in the collection of the International Bureau, the International Bureau shall, upon request of either the Council for TRIPS or the WTO Secretariat, give to the WTO Secretariat, free of charge, the requested copy.

(c) The International Bureau shall, on request, furnish to the WTO Secretariat on the same terms as apply to Member States of WIPO any additional copies of the laws, regulations and translations given under subparagraph (a) or (b), as well as copies of any other laws and regulations, and copies of translations thereof, which exist in the collection of the International Bureau.

(d) The International Bureau shall not put any restriction on the use that the WTO Secretariat may make of the copies of laws, regulations and translations transmitted under subparagraph (a), (b) or (c).

(4) [Laws and Regulations Received by the WTO Secretariat from WTO Members]

(a) The WTO Secretariat shall transmit to the International Bureau, free of charge, a copy of the laws and regulations received by the WTO Secretariat from WTO Members under Article 63.2 of the TRIPS Agreement in the language or languages and in the form or forms in which they were received, and the International Bureau shall place such copies in its collection.

(b) The WTO Secretariat shall not put any restriction on the further use that the International Bureau may make of the copies of the laws and regulations transmitted under subparagraph (a).

(5) [Translation of Laws and Regulations] The International Bureau shall make available to developing country WTO Members which are not Member States of WIPO the same assistance for translation of laws and regulations for the purposes of Article 63.2 of the TRIPS Agreement as it makes available to Members of WIPO which are developing countries.

### Article 3

#### Implementation of Article 6ter of the Paris Convention for the Purposes of the TRIPS Agreement

(1) [General]

(a) The procedures relating to communication of emblems and transmittal of objections under the TRIPS Agreement shall be administered by the International Bureau in accordance with the procedures applicable under Article 6ter of the Paris Convention (1967).

(b) The International Bureau shall not recommunicate to a State party to the Paris Convention which is a WTO Member an emblem which had already been communicated to it by the International Bureau under Article 6ter of the Paris Convention prior to January 1, 1996, or, where that State became a WTO Member after January 1, 1996, prior to the date on which it became a WTO Member, and the International Bureau shall not transmit any objection received from the said WTO Member concerning the said emblem if the objection is received by the International Bureau more than 12 months after receipt of the communication of the said emblem under Article 6ter of the Paris Convention by the said State.

(2) [Objections] Notwithstanding paragraph (1)(a), any objection received by the International Bureau from a WTO Member which concerns an emblem that had been communicated to the International Bureau by another WTO Member where at least one of the said WTO Members is not party to the Paris Convention, and any objection which concerns an emblem of an international intergovernmental organization and which is received by the International Bureau from a WTO Member not party to the Paris Convention or not bound under the Paris Convention to protect emblems of international intergovernmental organizations, shall be transmitted by the International Bureau to the WTO Member or international intergovernmental organization concerned regardless of the date on which the objection had been received by the International Bureau. The provisions of the preceding sentence shall not affect the time limit of 12 months for the lodging of an objection.

(3) [Information to Be Provided to the WTO Secretariat] The International Bureau shall provide to the WTO Secretariat information relating to any emblem communicated by a WTO Member to the International Bureau or communicated by the International Bureau to a WTO Member.

## Article 4

### Legal-Technical Assistance and Technical Cooperation

(1) [Availability of Legal-Technical Assistance and Technical Cooperation] The International Bureau shall make available to developing country WTO Members which are not Member States of WIPO the same legal-technical assistance relating to the TRIPS Agreement as it makes available to Member States of WIPO which are developing countries. The WTO Secretariat shall make available to Member States of WIPO which are developing countries and are not WTO Members the same technical cooperation relating to the TRIPS Agreement as it makes available to developing country WTO Members.

(2) [Cooperation Between the International Bureau and the WTO Secretariat] The International Bureau and the WTO Secretariat shall enhance cooperation in their legal-technical assistance and technical cooperation activities relating to the TRIPS Agreement for developing countries, so as to maximize the usefulness of those activities and ensure their mutually supportive nature.

(3) [Exchange of Information] For the purposes of paragraphs (1) and (2), the International Bureau and the WTO Secretariat shall keep in regular contact and exchange non-confidential information.

## Article 5

### Final Clauses

(1) [Entry into Force of this Agreement] This Agreement shall enter into force on January 1, 1996.

(2) [Amendment of this Agreement] This Agreement may be amended by common agreement of the parties to this Agreement.

(3) [Termination of this Agreement] If one of the parties to this Agreement gives the other party written notice to terminate this Agreement, this Agreement shall terminate one year after receipt of the notice by the other party, unless a longer period is specified in the notice or unless both parties agree on a longer or a shorter period.

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Done in Geneva on December 22, 1995.

For the World Intellectual Property Organization      For the World Trade Organization

A. Bogsch  
Director General

R. Ruggiero  
Director General

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<sup>1</sup>Entry into force: January 1, 1996



Bureau of  
**Copyright**  
and Related Rights

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