

Agreement on Trade-Related Aspects of Intellectual Property Rights

- Members, Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade ; Recognizing, to this end, the need for new rules and disciplines concerning :
 - (a)

the applicability of the basic principles of the GATT 1994 and of relevant international intellectual property agreements or conventions
 - (b)

the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights
 - (c)

the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems
 - (d)

the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments and
 - (e)

transitional arrangements aiming at the fullest participation in the results of the negotiations Recognizing the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods Recognizing that intellectual property rights are private rights Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations ; Hereby agree as follows :

► Article 1

- 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. 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. 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

- 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

- 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 of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and 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

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

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

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

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.

(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

- 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 technologies.

► Article 9

- 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

- 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**

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**

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**

Broadcasting organisations shall enjoy the right to authorise 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**

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

- 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 connexion 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 connexion with the protection of copyright in literary and artistic works. However, compulsory licenses may be provided for only to the extent to which they are compatible with this Convention.

► Article 16

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 State 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

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

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

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

- 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 Conventions 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

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

▶ Article 22

Contracting State 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

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 Article Works.

▶ Article 24

- 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

- 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

- 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

- 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 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 Article 17 and 18, may be extended to cover all or any of the territories referred to in paragraph 1 of this Article.

► Article 28

- 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

- 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 State notify him of their concurrence with the request, the Secretary-General shall inform the Director-General of the International Labour 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 cooperation 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 be 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

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

Without prejudice to the provision 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

- 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 organised among the Contracting States, each of which shall have one vote, by the Director-General of the International Labour 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 Labour 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 Labour Office, the United Nations Educational, Scientific and Cultural Organization and the Bureau of the International Union for the Protection of Literary and Article Works.

- 7.

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

► Article 33

- 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

- 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 Labour 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 paragraph 4 and 5 of Article 28 arise.

- 2.

The Secretary-General of the United Nations shall also notify the Director-General of the International Labour 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 Labour 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.