

## CHAPTER [X]

### INTELLECTUAL PROPERTY

#### Section B Cooperation

##### Article B.1 Contact Point for Cooperation

Each Party shall designate and notify the other Party of one or more contact points for the purpose of cooperation under this Section.

##### Article B.2: Cooperation

1. The Parties recognise the growing importance of the protection of intellectual property in promoting trade and investment between them and shall endeavour to cooperate on the subject matter covered by this Chapter. This may include through appropriate coordination and exchange of information between their respective intellectual property offices, or other agencies or institutions, as determined by each Party. The areas of cooperation may include:
  - a. the establishment of arrangements between their respective collecting societies;
  - b. engagement with SMEs, including SME focussed events and through public-private collaborations, particularly in relation to the use, protection and enforcement of intellectual property rights;
  - c. the exchange of information on issues of interest to SMEs, including access to affordable justice;
  - d. cooperation on education and awareness campaigns relating to intellectual property rights aimed at the public and businesses;
  - e. the exchange of information in relation to intellectual property policy and law relevant to new and relevant technologies and subjects such as artificial intelligence, clean growth and green technology;
  - f. cooperation on aspects on intellectual property policy and law to tackle environmental challenges, including promoting the development and adoption of low carbon, environmentally friendly, and other climate friendly technologies;
  - g. best practices, projects and programmes aimed at reducing intellectual property rights infringements including:
    - i. coordination to prevent exports of commercial and pirated goods, including with other countries;
    - ii. sharing of experience of intellectual property rights enforcement between customs, law enforcement and judicial bodies; and
    - iii. voluntary stakeholder initiatives to reduce intellectual property infringement, including over the internet and other marketplace;

- h. capacity building and technical assistance, particularly in relation to application processes for obtaining and maintaining intellectual property rights, reducing intellectual property infringement and enforcement of intellectual property rights.
2. In addition, the Parties shall endeavour to cooperate in relation to activities for improving the international intellectual property regulatory framework, including by:
  - a. advocating for the further ratification of international agreements on intellectual property to which both parties are party;
  - b. fostering international harmonisation, administration and enforcement of intellectual property rights; and
  - c. working together on relevant activities in international organizations including the WTO and WIPO.

### **Article B.3: Working Group on Intellectual Property Rights**

1. The Parties hereby establish a [Working Group on Intellectual Property Rights] composed of government representatives of each Party. The Working Group may also invite experts to attend meetings and advise the [Working Group] on any matter falling within its functions.
2. The Working Group may meet physically or virtually, as agreed by the parties.
3. Without prejudice and as complement to Article B.2 (Cooperation), the [Working Group] shall:
  - a. review and monitor the implementation and operation of this Chapter;
  - b. discuss any issues pertaining to the protection and enforcement of intellectual property rights and the promotion of efficient and transparent administration of intellectual property systems and exchange information relating to intellectual property rights matters, including how intellectual property protection contributes to innovation, creativity, economic growth and employment;
  - c. [report its findings and the outcomes of its discussions to the Joint Committee];
  - d. [carry out the functions specified in [Article XX] (Modifications to the Lists of Protected Geographical Indications)].
4. The [Working Group] shall meet within one year after the date of entry into force of this Agreement and thereafter annually if requested by either Party.

### **Article B.4: Patent Cooperation and Work Sharing**

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

2. Further to paragraph 1, the Parties shall endeavour to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work of the Parties. This may include:
  - a. Making search and examination results available to the patent offices of the other Party<sup>1</sup>; and
  - b. exchanging information on quality assurance systems and quality standards relating to patent examination
3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to cooperate to reduce differences in procedures and processes of their respective patent offices.

#### **Article B.5: Cooperation on Request**

Cooperation activities undertaken under this Chapter are subject to the availability of resources and on request, and on terms and conditions mutually decided upon between the parties. The parties affirm that the cooperation in this section is in addition to and without prejudice to other past, ongoing, and future cooperation activities, both bilateral and multilateral, between the parties, including between their respective intellectual property offices.

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<sup>1</sup> The Parties sharing recognise the importance of multilateral efforts to promote the sharing and use of search and examination results with a view to improving the quality of search and examination processes and for reducing the costs on both applicants and patent offices.

## SECTIONS C

### Trade Marks

#### Article C.1: Types of Signs Registrable as Trade Marks

Neither Party shall require, as a condition of registration, that a sign be visually perceptible. Additionally, neither party shall require, as a condition of registration, graphical representation of such a sign. A Party may require a concise and accurate description, as a condition of registration.

#### Article C.2: Rights Conferred

Each Party shall provide that the owner of a registered trade mark has 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 trade mark is registered where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of each party making rights available on the basis of use.

#### Article C.3: Exceptions

Each Party shall 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 trade mark and of third parties.

#### Article C.4: Well-known Marks

For the purpose of giving effect to the protection of well-known trademarks as referred to in Article 6bis of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement each party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of the WIPO in 1999.

#### Article C.5: Bad Faith Applications

1. In accordance with each Party's respective laws:
  - a. each Party shall provide that a trade mark shall be liable to be declared invalid if the application for registration of the trade mark was made in bad faith by the applicant; and
  - b. each Party shall also provide that such a trade mark shall not be registered.

#### Article C.6: Procedural Aspects of Examination, Opposition and Cancellation

1. Each Party shall provide a system for the examination and registration of trademarks that includes other Things:
  - a. Communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trade mark.

- b. Providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal. and to make a judicial appeal of any refusal to register a trade mark;
- c. Providing an opportunity to oppose an application for the registration of a trade mark and an opportunity to seek cancellation<sup>2</sup> of a trade mark through. at a minimum, administrative procedures and
- d. requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which may be provided by electronic means..

#### **Article C.7: Electronic Trade Mark System**

1. Each Party shall provide:
  - a. a system for the electronic application for, and the maintenance of trademarks: and
  - b. a publicly available electronic information system, including an online database. of trade mark applications and of registered trademarks.

#### **Article C.8: Term of Protection**

Each Party shall provide that initial registration and each renewal of registration of a trade mark is for a term of no less than 10 years.

#### **Article C.9: Trade Mark Systems Harmonisation Efforts**

The Parties recognise the importance of reducing differences in law and practice between the Parties respective systems for the protection trademarks. In addition, each Party shall endeavour to participate in international trade mark harmonisation efforts including the WIPO for dealing with reform and development of the international trade mark System.

#### **Article C.10: Domain names**

1. In connection with each Party's system for the management of country-code top level domain (ccTLD) domains names .the Parties recognise the benefits of appropriate remedies being available in cases in which a person register or holds, with a bad faith in lo profit. a domain name that is identical or con similar to a trade mark,
2. The Parties understand that such remedies may but need to include among other things revocation, cancellation, transfer, damages or injunctive relief.

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<sup>2</sup> For greater certainty cancellation for the purpose of this section may be implemented through an invalidation or revocation proceeding

## Section D

### Geographical Indications

#### Article D.1: Scope

1. This Section applies to the recognition and protection of geographical indications in The territories of the Parties for wines, spirits. Agricultural products and foodstuffs
2. For the purposes of this [Chapter]. “geographical indication” which identifies a good & originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially its geographic origin.

#### Article D.2: System for the Recognition and Protection of Geographical Indications

1. Each Party shall maintain a system for the recognition and protection of geographical indications in its territory.
2. The system referred to in paragraph I shall contain at least the following elements:
  - a. public register listing geographical indication protected in the territory of the Party
  - b. an administrative process of examination to verify that a geographical indication to be registered as referred to subparagraph (a) identifies a good as originating in the territory region or locality where a given quality, reputation or other characteristic of the essentially attributable to its geographical origin:
  - c. a requirement that a geographical indication shall correspond to a specific good or goods for which a specification is laid down which may only be by due administrative processes:
  - d. an opposition procedure that allows the legitimate interest of third parties to be taken into account:
  - e. A system to verify and monitor that the production of a good or goods using the name of a protected geographical indication conforms to the corresponding specification:
  - f. Legal provisions providing that a protected geographical indication may be used by any person marketing a relevant good but only if the good conforms to the corresponding specification: and
  - g. a procedure for the cancellation of the protection of a proceed geographical indication, taking into account the legitimate interests of third parties and the users of the geographical indication in question.

#### Article D.3: List of Protected Geographical Indications

1. The United Kingdom shall protect the geographical indications of India listed in Part 1 of Annex IXI (protected geographical indications )having been recognised and protected in India under the system referred to in Article D. 2 (System for the Recognition and Protection of Geographical

Indications) and subsequently having been examined and having Completed and passed an opposition procedure in the United Kingdom under its domestic requirement

2. India shall protect the geographical indications of the United Kingdom listed in Part 2 Annex [X] (Protected geographical Indications) in accordance with this section .those geographical indications having been recognised and protected in the United Kingdom under the system referred to in Article D 2 (System for the Recognition and protection of geographical Indications) and subsequently having been examined and leaving completed and passed an opposition procedure in India under its domestic requirements<sup>3</sup>.
3. For the purposes of this Section the date of protection of the geographical indication is the date that the modification of the list of geographical indications in Annex [X] (Protected Geographical Indications).pursuant to [paragraph X of] Article D.7 (Modifications in the Lists of Protected Geographical Indications), listing the geographical indication is adopted.

#### **Article D.4: Scope of Protection of Geographical Indications**

1. Each Party shall, in respect of the geographical indications protected under this Section, protect against:
  - a. any direct or indirect commercial use of the name of the geographical indication in respect of comparable goods not conforming with the corresponding specification of the geographical indication a where use of the name exploits the reputation of the graphical indication:
  - b. any misuse, imitation of evocation, even if the true origin of the good is indicated or if the geographical indication is translated or the geographical indication is accompanied by expressions such a style "Type", "method.as produced in" "imitation", or similar,
  - c. Any other false or misleading indication in the marketing of a good as to its provenance . origin, nature or essential qualities, which is liable to convey a false impression as to its origin; and
  - d. any other use which constitutes an act of unfair competition within the meaning: Article 10bis of the Paris convention.
2. Neither Party shall be required to protect a name as a geographical indication under this Section if that name:
  - a. conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead consumers as to the true origin of the good: or
  - b. is the term customer in common language as the common name for the good concerned in the territory of that Party
3. Neither Party shall be required to protect a name as a geographical indication under this Section if. In light of a prior trade mark pending application for registration of trade mark, its domestic laws and regulations would prevent protection of the geographical indication.

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<sup>3</sup> For greater certainty references to domestic requirements in this section are to those requirements as amended.

4. Nothing in this Agreement shall prejudice the right of any person's to use in the course of trade that person's predecessor in business, except where such name is used in such a manner as to mislead consumers.
5. Each Party shall decide the practical conditions of use under which homonymous geographical indications will be differentiated from each other in its territory, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.
6. If a Party ("Party A) intends to consider the registration of a geographical indication of non-party pursuant to an international agreement or through the system referred to in Article D 2 (System for the Recognition and protection of Geographical Indications) which is homonymous with a geographical indication of the other Party ("Party B") protected under this section. Party A shall inform, no later than on the date of the publication for opposition of that geographical indication, Party B the opportunity to comment, provided that the date of such publication is after the date entry into force of this Agreement.
7. Nothing in this Agreement shall oblige à Party to protect a geographical indication of the other Party which is not or ceases to be protected in accordance with the law of the other Party .Each Party shall promptly notify the other Party the other Party if a geographical indication protected under this Section ceases to be protected in the territory of the Party of origin. [Such notification shall take place in accordance with the procedure set out in in Article [X].
8. A Party shall not in respect of geographical indications of other Party submitted for protection pursuant to [paragraph X of] Article D.7 Modifications to the list of Protected Geographical Indications) or protected under this Section, as applicable:
  - a. require the payment of a fee for the application, registration or use of the geographical indication in the territory of the Party: or
  - b. require that protection to be renewed.

#### **Article D.5: Relationship with Trade Marks**

1. Each Party shall refuse to register or shall invalidate a trade mark that corresponds to any of the situations referred to in sub~~paragraph~~ (a) and (b) of paragraph 1 of Article D 4 (Scope of Protection of Geographical Indications) in respect of a geographical indication protected under this Section, provided that in application for registration of the trademark is submitted after the date of application for recognition protection of the geographical indication in the territory concerned.
2. Each Party shall censure that the recognition and protection of a geographical indication under this Section is without prejudice to the continued use of a trade mark which has been applied for registered or established by use, if that possibility is provided for by the laws and regulations concerned, in the territory of a Party before the date of the application for recognition of protection of the geographical indication. Such prior trade mark may continue to be used and renewed for that good notwithstanding the protection of the geographical indication, provided that no grounds for the trade mark's invalidity or revocation exist in the laws and regulations of the Party concerned.
3. For the purposes of this Article, the date of application for recognition or protection of geographical indication listed in Annex [X] (Protected Geographical Indications) shall be the later date of either the



date of a Party's receipt of a request by the other Party to recognise or protect a geographical indication or the date of entry into force of this Agreement.

**Article D.6: Enforcement of Protection**

Each Party shall require its competent authorities to take appropriate measures, in accordance with its laws and regulations ex-officio or an request of an interested party, to protect the Geographical indications listed in Annex [X] (Protected Geographical Indications) pursuant to this Section

**Article D.7: Modifications to the Lists of Protected Geographical Indications**

[The United Kingdom reserves the right to make subsequent proposals on text in respect of this Article]

## Section [E]

### Patents

#### Article E.1: Rights Conferred

1. Each Party shall provide that a patent confers 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 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. Each Party shall also provide that a patent owner has the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

#### Article E.2: Patentable Subject Matter

1. Subject to paragraphs 3 and 4, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application.<sup>4</sup> Subject to paragraph 4, each Party shall make patents 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. In implementing paragraph 1, each Party shall treat any new medical use for a known substance or composition as capable of being a patentable invention. Neither Party shall require that a new medical use or a new medical form for a known substance or composition must enhance the known efficacy of that substance or composition in order to be treated as a patentable invention.
3. A Party may exclude from patentability inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law.
4. A Party may also exclude from patentability:
  - a. diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and
  - b. plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.

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<sup>4</sup> For the purposes of this Article, a Party may deem the terms "inventive step and capable of industrial application" to be synonymous with the terms non-obvious and "useful respectively.

### **Article E.3: Exceptions**

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

### **Article E.4: Regulatory Review Exception**

Without prejudice to the scope of, and consistent with, Article [E3] (Exceptions), each Party shall adopt or maintain a regulatory review exception for pharmaceutical products that permits a third party to do an act that would otherwise infringe a patent in the territory of that Party, if the act is done for purposes related to generating information to meet requirements for marketing approval of a pharmaceutical product in that Party or another country or both.

### **Article E.5: Other Use Without Authorisation of the Right Holder**

The Parties understand that nothing in this Chapter shall limit a Party's rights and obligations under the TRIPS Agreement to authorise the use of a patent.

### **Article E.6: Amendments, Corrections and Observations**

1. Each Party shall provide a patent applicant with at least one opportunity to make amendments, corrections and observations in connection with its application.
2. Neither Party shall revoke or invalidate a patent, either totally or in part, without the patent owner being given the opportunity to make observations on the intended revocation or invalidation, and to make amendments and corrections where permitted under a Party's law within a reasonable time limit.
3. A Party may provide that amendments made pursuant to paragraph 1 or 2 do not go beyond the scope of the disclosure of the invention, as of the filing date.

### **Article E.7: Publication of Patent Applications**

1. Recognising the benefits of transparency in the patent system, each Party shall endeavour to publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the earliest priority date.
2. If a pending application is not published promptly in accordance with paragraph 1, a Party shall publish that application, or the corresponding patent, as soon as practicable.
3. Each Party shall provide that an applicant may request the early publication of an application prior to the expiration of the period referred to in paragraph 1.

### **Article E.8: Information Relating to Published Patent Applications and Granted Patents**

For published patent applications and granted patents, and in accordance with the Party's requirements for prosecution of such applications and patents, each Party shall make available to the public at least the following information, to the extent that such information is in the possession of the competent authorities and is generated on, or after, the date of the entry into force of this Agreement:

- a. search and examination results, including details of, or information related to, relevant prior art searches;
- b. as appropriate, non-confidential communications from applicants; and
- c. patent and non-patent related literature citations submitted by applicants and relevant third parties.

### **Article E.9: Conditions on Patent Applicants**

1. Each Party shall require an applicant for a patent to disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art. A Party may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants. In such a case, a failure to disclose such information shall not constitute grounds for opposition, revocation, or refusal to grant a patent.

### **Article E.10: Opposition Proceedings**

Where a Party provides proceedings that allow a third party to oppose the grant of a patent, the Party shall not make such proceedings available before the grant of the patent.

### **Article E.11 Patent Working Disclosure Requirement**

1. Neither Party shall require a patent owner to provide periodic disclosures of information concerning the working of a patent.
2. Notwithstanding paragraph 1, a Party may require a patent owner to provide a disclosure concerning the working of a patent in the context of an active application for a compulsory licence, in accordance with its law.

### **Article E.12: Extension of the Duration of Rights Conferred by a Patent**

1. The Parties recognise that pharmaceutical products and plant protection products<sup>5</sup> protected by a patent in their respective territories may be subject to a marketing approval procedure before being put on their respective markets.

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<sup>5</sup> For the purposes of this Article, the term "plant protection product shall be defined in accordance with each Party's law.

2. Each Party shall provide an adequate and effective mechanism to compensate the patent owner for the reduction in the effective patent term resulting from that marketing approval procedure, through either:
  - a. a period of additional *sui generis* protection conferring the rights conferred by the patent; or
  - b. an extension of the patent term.
3. In implementing paragraph 2, a Party may provide for conditions, limitations, waivers, and exceptions provided that the Party continues to give effect to this Article.

## Section [F]

### Undisclosed Test or Other Data

#### Article F.1: Protection of Undisclosed Test or Other Data for Agricultural Chemical Products

1. If a Party requires, as a condition for granting marketing approval for a new agricultural chemical product, the submission of undisclosed test or other data, that Party shall ensure that, in accordance with its law, either:
  - a. third parties are not permitted, without the consent of the person that previously submitted such information, to market the same or a similar<sup>6</sup> product on the basis of that information for at least 10 years from the date of marketing approval of the previously approved agricultural chemical product; or
  - b. applicants for marketing approval are generally required to submit a full set of test data, even in cases where there was a prior application for the same product, for a period of at least 10 years, counted from the date of approval of a prior application.<sup>7</sup>
2. For the purposes of this Article, a new agricultural chemical product is one that contains<sup>8</sup> a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

#### Article F.2: Protection of Undisclosed Test or Other Data for Pharmaceutical Products

1. If a Party requires, as a condition for granting marketing approval for a new pharmaceutical product, the submission of undisclosed test or other data, that Party shall not permit third parties, without the consent of the person that previously submitted that information, to place on the market the same or a similar<sup>9</sup> product on the basis of:
  - a. that information; or
  - b. the marketing approval granted to the person that submitted that informationfor at least six years from the date of marketing approval of the previously approved pharmaceutical product; such date to be determined in accordance with each Party's law.

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<sup>6</sup> For greater certainty, for the purposes of this Section, an agricultural chemical product is "similar to a previously approved agricultural chemical product" if the marketing approval or, in the alternative, the applicant's request for such approval, of that similar agricultural chemical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved agricultural chemical product, or the prior approval of that previously approved product.

<sup>7</sup> For greater certainty, nothing in this Article prevents a Party from applying reasonable exceptions in its law in order to protect animal welfare or to prevent unnecessary animal testing.

<sup>8</sup> For the purposes of this Article, a Party may treat "contains" as meaning "utilise". For greater certainty, for the purposes of this Article, a Party may treat "utilise" as meaning "utilise". For greater certainty, for the purposes of this Article, a Party may treat "utilise" as meaning "utilise". For greater certainty, for the purposes of this Article, a Party may treat "utilise" as meaning "utilise". For the product's intended effect.

<sup>9</sup> For greater certainty, for the purposes of this Section, a pharmaceutical product is similar to a previously approved pharmaceutical product if the marketing approval or, in the alternative, the applicant's request for that approval, of that similar pharmaceutical product is based upon the undisclosed test or other data concerning the safety, efficacy and quality of the previously approved pharmaceutical product, or the prior approval of that previously approved product.

2. For the purposes of this Article, a new pharmaceutical product is one that does not consist of or contain<sup>10</sup> a chemical entity or biologic that has been previously approved for marketing in the Party.

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<sup>10</sup> For the purposes of this Article, a Party may treat "contain" as meaning "utilise".

## **Section [G]**

### **Designs**

#### **Article G.1: Protection of Registered Industrial Designs**

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. This protection shall be provided by registration and shall confer an exclusive right upon the owner of the registered industrial design in accordance with the provisions of this Article.
2. Each Party may provide limited exceptions to the protection of registered industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of registered industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the registered industrial design, taking account of the legitimate interests of third parties.
3. Each Party shall ensure that an owner of a registered industrial design has at least the right to prevent third parties not having the owner's consent from making, offering, selling, importing, exporting, or stocking a product bearing or embodying the registered design or using a product bearing or embodying the registered design where such acts are undertaken for commercial purposes.

#### **Article G.2: Duration of Protection**

Each Party shall ensure that the total term of protection available for registered industrial designs is no less than 25 years.

#### **Article G.3: Multiple Design Applications**

Each Party shall allow for two or more industrial designs to be registered through the filing of one application.

#### **Article G.4: Electronic Design System**

1. Each Party shall provide:
  - a. a system for the electronic application for, and renewal of registered industrial designs; and
  - b. a publicly available electronic information system, which must include an online database of registered industrial designs.

#### **Article G.5: Unregistered Appearance of Products**

1. Each Party shall provide, in accordance with its law, that the unregistered appearance of the whole or part of a product which may result from the lines, contours, shape, texture or materials of the product or its ornamentation, shall be protected against copying.
2. The duration of protection available for the unregistered appearance of a product shall amount to at least three years.



## **Article G.6: Relationship to Copyright**

Each Party may provide that the subject matter of a design, including the unregistered appearance of a product, may also be protected under copyright law if the conditions for such protection are met. The extent to which, and the conditions under which, such protection is conferred, including the level of originality required, shall be determined by each Party.

## Section [H]

### Copyright and Related Rights

#### Article H.1 Authors

1. Each Party shall provide for authors the exclusive right to authorise or prohibit:
  - a. the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their works;
  - b. the distribution to the public, by sale or otherwise, of their works;
  - c. the communication to the public of their works, by wire or wireless means, including broadcasting and the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them; and
  - d. the commercial rental<sup>11</sup> to the public of their works.
2. For the purposes of this Article, "communication to the public" shall be construed in accordance with Article 8 of the WCT.

#### Article H.2: Performers

1. Each Party shall provide for performers the exclusive right to authorise or prohibit:
  - a. the fixation of their unfixed performances;
  - b. the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their performances;
  - c. the distribution to the public, by sale or otherwise, of fixations of their performances;
  - d. the making available to the public of fixations of their performances, 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;
  - e. the broadcasting and the communication to the public of their unfixed performances except where the performance is itself already a broadcast performance; and
  - f. the commercial rental to the public of fixations of their performances.
2. For the purposes of this Article, "communication to the public" means the transmission to the public by any medium, other than by broadcasting.<sup>12</sup>

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<sup>11</sup> A Party may choose not to grant the right of commercial rental to the public in respect of works of architecture in the form of a building or a model for a building, or a work of applied art.

<sup>12</sup> For the purpose of this Article, "communication to the public" does not include the making available to the public of fixations of performances, 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 H.3: Producers of Phonograms**

1. Each Party shall provide for producers of phonograms the exclusive right to authorise or prohibit:
  - a. the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of their phonograms;
  - b. the distribution to the public, by sale or otherwise, of their phonograms;
  - c. 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; and
  - d. the commercial rental of their phonograms to the public.

### **Article H.4: Broadcasting Organisations**

1. Each Party shall provide for broadcasting organisations the exclusive right to authorise or prohibit:
  - a. the fixation of their broadcasts:
  - b. the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts:
  - c. the making available to the public of fixations of their broadcasts. in such a way that members of the public may access them from a place and at a time individually chosen by them:
  - d. the distribution to the public, by sale or otherwise, of fixations of their broadcasts:
  - e. the rebroadcasting of their broadcasts; and
  - f. the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.
2. For the purposes of this Article, “communication to the public” shall be construed in accordance with Article 13(d) of the Rome Convention.

### **Article H.5: Broadcasting and Communication to the Public of Phonograms Published for Commercial Purposes<sup>13</sup>**

1. Each Party shall provide a right in order to ensure that a single equitable remuneration is paid by the user to the performers and producers of phonograms, if a phonogram published for commercial purposes is directly or indirectly used for broadcasting or any communication to the public.
2. Each Party shall ensure that the single equitable remuneration is shared between the relevant performers and phonogram producers. Each Party may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.
3. For the purposes of this Article, “communication to the public” shall be construed in accordance with Article 2(g) of the WPPT.<sup>14]</sup>

### **Article H.6: Artist's Resale Right**

1. [Each Party shall provide, for the benefit of the author of an original work of graphic or plastic art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.
2. Each Party shall provide that the right referred to in paragraph I shall apply to all acts of resale involving any sellers, buyers or intermediaries acting in the course of business of dealing in works of art, such as salesrooms, art galleries and, in general, any dealers in works of art.
3. Each Party may provide that the right referred to in paragraph I shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount specified in a Party's law.
4. Each Party may determine the procedure for collection of the royalty, its amount and the criteria for the works, resales and authors eligible to receive the royalty under its domestic law.
5. Each Party shall provide the right referred to in this Article for authors of the other Party on a reciprocal basis.

### **Article H.7: Limitations and Exceptions**

1. Each Party may introduce limitations or exceptions in its domestic law to the rights provided for in this Section [H], but shall confine such limitations or exceptions to certain special cases that do not conflict with a normal exploitation of covered subject matter, and do not unreasonably prejudice the legitimate interests of the right holder.

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<sup>13</sup> 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>14</sup> For the purposes of this Article, “Communication to the public” does not include the making available to the public of a phonogram, 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.

2. This Article is without prejudice to the limitations and exceptions to any rights permitted by international agreements such as the TRIPS Agreement, the Berne Convention, the Romo Convention, the WCT. or the WPPT.

#### **Article H.8: Term of Protection**

1. Each Party shall provide that the rights of an author of a work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after the author's death.
2. In the case of a work of joint authorship, each Party shall provide that the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. Where the term of protection of a work is not determined by reference to the life of a natural person, each Party shall provide that the term of protection shall run for 70 years from the creation of the work or, if lawfully made available to the public within 70 years from creation, 70 years from the first such making available.
4. Each Party shall provide that the rights of broadcasting organisations shall run for 50 years from the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.
5. Each Party shall provide that the rights of performers for their performances otherwise than in phonograms shall run for 50 years from the fixation of the performance or, if made available to the public during this time, 50 years from the first such making available.
6. Each Party shall provide that the rights of performers for their performances in phonograms shall run for 50 years from the fixation of the performance or, if lawfully made available to the public during this time, 70 years from the first such making available.
7. Each Party shall provide that the rights of producers of phonograms shall run for 50 years from the fixation being made or, if lawfully made available to the public during this time, 70 years from the first such making available. Each Party may adopt effective measures to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.
8. Each Party shall provide that the terms laid down in this Article shall be calculated from 1 January of the year following the event.
9. Each Party may provide for longer terms of protection than those provided for in this Article.

#### **Article H.9: Collective Management Organisations**

1. The Parties shall promote cooperation between the collective management organisations established in their respective territories for the purpose of facilitating licensing of content between the Parties, as well as encouraging the transfer of rights revenue between the respective collective management organisations for the use of such content.

2. Each Party shall provide that the collective management organisations established in their respective territories shall act in a transparent manner, particularly in relation to the collection of rights revenues, the deductions they make from the rights revenue collected, their distribution policies, and the repertoire they represent.
3. Each Party shall promote the non-discriminatory treatment by collective management organisations of rights holders these organisations represent either directly or via another collective management organisation.
4. Each Party shall provide that the collective management organisations established in their respective territories regularly, diligently, and accurately distribute amounts due to represented collective management organisations in a timely manner.

#### **Article H.10 Technological Protection Measures**

1. Each Party shall provide adequate legal protection and effective legal remedies against the unauthorised circumvention of effective technological measures, where carried out knowingly or with reasonable grounds to know.
2. Each Party shall provide adequate legal protection and effective legal remedies against the manufacture, import, distribution, sale, rental, offer or advertisement for Sale or rental, or possession for commercial purposes of devices, products or components, or the provision of services which:
  - a. are promoted, advertised or marketed for the purpose of circumvention of any effective technological measures:
  - b. have only a limited commercially significant purpose or use other than to circumvent any effective technological measures; or
  - c. are primarily designed, produced, adapted, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.
3. The obligations in this Article do not apply in respect of elective technological measures applied to computer programs.
4. Each Party may take appropriate measures, as necessary, to ensure that the protection afforded in accordance with this Article does not prevent beneficiaries of exceptions or limitations provided for in accordance with Article [H.7] (Limitations and Exceptions) from enjoying such exceptions or limitations.
5. For the purposes of this Article. "effective technological measures" means any technology, device, or component which, in the normal course of its operation, is designed to prevent or restrict acts in respect of covered subject matter through the application of a relevant access control or protection process, such as encryption or scrambling, or a copy control mechanism, and which achieves the intended protection.

#### Article H.11: **Rights Management Information**

1. Each Party shall provide adequate legal protection and effective legal remedies against any person knowingly performing, without authority, any of the following acts knowing, or having reasonable grounds to know that it will induce, enable, facilitate, or conceal an infringement of covered subject matter:
  - a. to remove or alter any electronic rights management information; or
  - b. to distribute, import for distribution, broadcast, communicate, or make available to the public covered subject matter knowing that electronic rights management information has been removed or altered without authority.
2. For greater certainty, this Article does not prevent beneficiaries of exceptions or limitations provided for in accordance with Article H.7 (Limitations and Exceptions) from enjoying such exceptions or limitations.
3. For the purposes of this Article, "rights management information" means:
  - a. information that identifies covered subject matter, the author, performer, producer of a phonogram or any other right holder with respect to covered subject matter;
  - b. information about the terms and conditions of use of covered subject matter; or
  - c. any numbers or codes that represent the information described in (a) and (b) above, when any of these items of information is attached to covered subject matter, or appears in connection with the communication or making available of covered subject matter to the public.

## Section [I]

### Trade Secrets

#### Article I.1: Scope of Trade Secret Protection

1. In the course of ensuring effective protection against unfair competition as provided in Article 10~~bis~~ of the Paris Convention, each Party shall ensure that trade secret holders have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices.
2. Subject to paragraphs 3 and 4, each Party shall provide that at least each of the following conduct shall be considered contrary to honest commercial practices:
  - a. the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by unauthorised access to appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the Trade secret holder, containing the trade secret or from which the trade secret can be deduced;
  - b. the disclosure or use of a trade secret whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:
    - i. having acquired the trade secret in a manner referred to in subparagraph (a);
    - ii. being in breach of a confidentiality agreement or any other duty not to disclose the trade secret: or
    - iii. being in breach of a contractual or any other duty to limit the use of the Trade secret;
    - iv. the disclosure, acquisition, or use of a trade secret whenever carried out by a person who, at the time of the disclosure, acquisition, or use, knew or ought, under the circumstances, to have known that the trade secret has come into their possession directly or indirectly from another person who was disclosing the trade secret in a manner referred to in subparagraph (b).
3. Neither Party shall provide that the disclosure, acquisition, or use of a trade secret is considered contrary to honest commercial practices:
  - a. if the trade secret is obtained through:
    - i. independent discovery or creation;
    - ii. reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information; or
  - b. if the trade secret is disclosed or acquired in the exercise of the right of workers or workers' representatives to information and consultation in accordance with the Party's law: or



- c. if the disclosure, acquisition, or use is required or permitted by the Party's law.
  
- 4. Each Party may provide for limited exceptions and limitations to the rights of trade secret holders in circumstances where the legitimate interests of third parties, the general public or the Party outweigh the legitimate interests of trade secret holders, including:
  - a. for exercising the right to freedom of expression and information, including respect for the freedom and pluralism of the media;
  - b. for revealing misconduct, wrongdoing or illegal activity, provided that the person disclosing, acquiring, or using the trade secret did so for the purpose of protecting the general public interest; or
  - c. disclosure by workers to their representatives as part of the legitimate exercise by those representatives of their functions in accordance with the Party's law, provided that such disclosure was required to exercise those functions.

## **Section (J)**

### **Enforcement**

#### **Sub-Section 1: General Obligations**

##### **Article J.1**

1. Each party shall ensure that the enforcement measures, procedures and remedies set out in this Chapter are available under its 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.
2. Measures, procedures and remedies must be:
  - a. Fair and equitable;
  - b. applied in such a manner as to avoid the creation of barriers to legitimate trade, including electronic commerce. and to provide for safeguards against their abuse;
  - c. implemented in a manner consistent with the Party's law including laws and regulations concerning freedom of expression, fair process and the right to privacy; and
  - d. dissuasive and proportionate, taking into account the seriousness of the infringement and the interests of third parties.
3. Measures, procedures and remedies must not be unnecessarily complicated, costly, entail unreasonable time limits or give rise to unwarranted delays.
4. This Section does not create any obligation:
  - a. to put in place a judicial system for the enforcement of intellectual property rights distinct from that of the enforcement of laws and regulations in general, nor does it affect the capacity of each Party to enforce its laws and regulations in general; or
  - b. with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of laws and regulations in general.

#### **Sub-Section 2: Civil Remedies**

##### **Article J.2: Availability**

1. Each Party shall make available to a right holder civil judicial procedures, measures and remedies concerning the enforcement of any intellectual property right given under this Chapter.
2. Each Party may provide that other persons are entitled to seek the application of the measures, procedures and remedies referred to in this Sub-Section in accordance with its law.

### **Article J.3: Provisional and Precautionary Measures**

1. Each party shall provide that its judicial authorities may order prompt and effective provisional measures to preserve relevant evidence in relation to the alleged infringement, subject to the protection of confidential information.
2. Each Party shall provide that its judicial authorities may adopt provisional measures where appropriate without the other party having been heard, in particular, if any delay is likely to cause irreparable harm to the right holder or if there is a demonstrable risk of evidence being destroyed.
3. These provisional measures to preserve evidence may include the detailed description or the physical seizure of:
  - a. suspected infringing goods;
  - b. materials and implements predominantly used in the production or distribution of these goods; and
  - c. documentary evidence relevant to the infringement.
4. Each Party shall provide that its judicial authorities may, on request of the applicant:
  - a. issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or forbid, on a provisional basis and to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued under the same conditions, against an intermediary whose services are being used to infringe an intellectual property right; and
  - b. order, the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.
5. In the case of an alleged infringement committed on a commercial scale, each Party shall provide that if the applicant demonstrates circumstances likely to endanger the recovery of damages, its judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of the alleged infringer's bank accounts and other assets.

### **Article J.4: Right to Information**

1. Each Party shall provide that during civil proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer or alleged infringer and any other person who was:
  - a. find in possession of the infringing goods on a commercial scale;
  - b. found to be using the infringing services on a commercial scale;

- c. found to be providing commercial-scale services used in infringing activities; or
  - d. indicated by the person referred to in sub-paragraphs a, b or c as being involved in the production, manufacture or distribution of the goods or the provisions of the services.
2. Each Party shall provide that where a competent judicial authority makes an order referred to in paragraph 1, the information to be provided may comprise, as appropriate:
  - a. the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers, or
  - b. information on the quantities produced, manufactured, delivered, received, or ordered. as well as the price obtained for the goods or services in question.
3. This Article shall apply without prejudice to other provisions in a Party's law which:
  - a. grant the right holder rights to receive fuller information;
  - b. govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;
  - c. govern responsibility for misuse of the right to information;
  - d. afford an opportunity for refusing provide information which would force the person referred to in paragraph 1 to admit their own participation or that of their close relatives in an infringement of an intellectual property right;
  - e. govern the protection of confidentiality of information sources, or
  - f. govern the processing of personal data.

#### **Article J.5: Injunctions**

1. Each Party shall provide that where its judicial authorities have found an infringement of an intellectual property right, its judicial authorities have the authority to issue an injunction aimed at prohibiting or stopping the infringement.
2. The injunction referred to in paragraph 1 shall be available against:
  - a. the infringer, and
  - b. an intermediary whose services are used to infringe the intellectual property right.

### **Article J.6: Corrective Measures**

1. Each Party shall provide that on request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, its judicial authorities may order the definitive removal from the channels of commerce, or the destruction of goods that were found to be infringing an intellectual property right. Each Party shall also provide that its judicial authorities may also order, as appropriate, the destruction of materials and implements predominantly used in the creation or manufacture of those goods.
2. Each Party shall provide that the measures referred to in paragraph 1 are to be carried out at the expense of the infringer other than in exceptional circumstances.

### **Article J.7: Damages**

1. Each Party shall provide its judicial authorities have the authority to order an infringer who, knowingly or with reasonable grounds to know, engaged in activities infringing intellectual property rights to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement.
2. In determining the amount of damages for infringements of intellectual property rights, the judicial authorities of each Party may consider any legitimate measure of value that may be submitted by the right holder, which should at least include lost profits suffered by the injured party and unfair profits made by the infringer, where appropriate.

### **Article J.8: Legal Costs**

Each Party shall provide that its judicial authorities may order, in accordance with its law, that reasonable and proportionate legal costs and other expenses incurred by the successful party in legal proceedings concerning the infringement of intellectual property rights shall be borne by the unsuccessful party.

### **Article J.9: Safeguards**

1. Each Party shall provide that its judicial authorities have the authority to require the applicant for a measure provided for in Article X.J.3 (Provisional and Precautionary Measures) in respect of an intellectual property right to provide any reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that the infringement is imminent and to order the applicant to provide security or equivalent assurance set at a level sufficient to protect the person against whom a measure is sought and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to those procedures.
2. Each Party shall ensure that its judicial authorities have the authority to order a party at whose request measures were taken and who has abused enforcement procedures with regard to intellectual property rights, to provide to a person subject to these measures adequate compensation for the injury suffered because of the 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.
3. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of an intellectual property right, its judicial or other authorities have the authority to impose sanctions on

a party, counsel, expert, or other person subject to the court's jurisdiction for the violation of judicial orders concerning the protection of confidential information produced or exchanged in that proceeding.

#### **Article J.10: Administrative Procedures**

To the extent by civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that the procedures conform to principles equivalent in substance to those set out in this sub-section.

#### **Sub-Section 3: Border Measures**

##### **Article J.11: Scope of Border Measures**

1. Each Party shall provide for procedures under which a right holder may submit applications requesting the authorities to suspend the release of or to detain suspected goods under customs control.
2. For the purposes of this sub-section, "suspected goods" means goods suspected of infringing intellectual property rights under the law of the Party providing the procedures, including trademarks, copyrights and related rights, geographical indications, patents, industrial designs, topographic of integrated circuits and plant variety rights.
3. Each Party may exclude from the application of this sub-section small quantities of goods of a non-commercial nature contained in the travellers' personal luggage or sent in small consignments.
4. There shall be no obligation to apply such procedures, as described in this sub-section, 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.

##### **Article J.12: Applications**

1. Each Party shall provide that its competent authorities require a right holder who requests the procedures described in Article J.11 (Scope of Border Measures):
  - a. To provide adequate evidence to satisfy its competent authorities that, pursuant to its law, there is prima facie an infringement of the right holder's intellectual property right; and
  - b. to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognisable by its competent authorities.
2. Each Party shall ensure that its competent authorities decide whether it shall grant applications to suspend the release of suspected goods within a reasonable period of time of the initiation of the procedures described in Article J.11 (Scope of Border Measures).
3. Each party shall ensure that its competent authorities do not charge a fee to cover the administrative costs resulting from the processing or recording of an application.

4. Each Party shall provide that, where requested by the customs authorities, the holder of the granted application shall be obliged to reimburse the costs incurred by the customs authorities or other parties acting on behalf of customs authorities from the moment of detention or suspension of the release of the goods, including storage, handling, and any costs relating to the destruction or disposal of the goods.

#### **Article J.13: Ex Officio Action**

Each Party shall provide that its competent authorities may suspend the release into free circulation or detain, suspected goods under customs control ex-officio, without the need for a formal complaint from a third party or right holder. Each Party shall provide that its customs authorities use risk management to identify suspected goods, which may include random selection.

#### **Article J.14: Provision of Information to Right Holder**

Each Party may provide that its competent authorities have the authority to inform the right holder of the names and addresses of the consigner, exporter, consignee or importer, a description of the goods; the quantity of the goods and, if known, the country of origin of the goods. This paragraph is without prejudice to a Party's law pertaining to privacy or confidential information and applies if a Party's competent authorities have detained or suspended the release of suspected goods.

#### **Article J.15: Authority to Determine Infringements**

Each Party shall adopt or maintain procedures under which its competent authorities may determine, within a reasonable period after initiation of procedures described in Article J.11 (Scope Border Measures), whether suspected goods infringe an intellectual property right.

#### **Article J.16: Remedies**

Each Party shall provide that its competent authorities may order the destruction or disposal of suspected goods following a determination that the goods are infringing. In cases in which the goods are not destroyed, each Party shall provide that, other than in exceptional circumstances, the goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. In regard to counterfeit trade mark goods, the simple removal of the trade mark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.

### **Sub-Section 4: Criminal Procedures and Penalties**

#### **Article J.17: Criminal Offences**

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trade mark counterfeiting or copyright piracy on a commercial scale. For the purpose of this Article, the term "on a commercial" includes at least:
  - a. acts carried out for commercial advantage or financial gain; and

- b. significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related right holder in relation to the marketplace<sup>15</sup>
2. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation<sup>16</sup> and domestic use, in the course of trade and on a commercial scale, of a label or packaging:
  - a. to which trademarks been applied without authorisation that is identical to, or cannot be distinguished from a trade mark registered in its territory; and
  - b. that is intended to be used in the course of trade on goods that are identical to goods for which that trade mark is registered.
3. Each Party shall also provide that the offences specified in this Article are applicable in any free trade zones in a Party

#### **Article J.18: Aiding and Abetting**

With respect to the offences specified in Article J.17 (Criminal Offences), each Party shall provide that criminal liability for aiding and abetting is available under its law.<sup>17</sup>

#### **Article J.19: Ex-Officio Enforcement**

Each Party shall provide that its competent authorities may act upon their own initiative to initiate legal action with respect to the offences specified in Article J.17 (Criminal Offences) and Article J.18 (Aiding and Abetting), without the need for a formal complaint by a third party or right holder.

#### **Article J.20: Seizure**

With respect to the offences specified in Article J.17 (Criminal Offences) and Article J.18 (Aiding and Abetting), each Party shall provide that its competent authorities shall have the authority to order the seizure of suspected counterfeit trade mark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence and assets derived from, or obtained through the alleged infringing activity. If a Party requires identification of items subject to seizure as a prerequisite for issuing a judicial order referred to in this subparagraph, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure.

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<sup>15</sup> The Parties agree that a Party may comply with paragraph b by addressing such significant acts under its criminal procedures and penalties for non-authorised uses of protected works, performances and phonograms in its law. The Parties also agree that a Party may provide that the volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of copyright or related right holder in relation to the marketplace.

<sup>16</sup> A Party may comply with its obligation relating to importation of labels or packaging through its laws concerning distribution.

<sup>17</sup> For greater certainty, this Article also applies to offences in any free trade zones in a Party.



## **Article J.21: Forfeiture and Destruction of Goods**

1. With respect to the offences specified in Article J.17 (Criminal Offences) and Article J.18 (Aiding and Abetting), each Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of:
  - a. all counterfeit trade mark goods or pirated copyright goods;
  - b. materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trade mark goods; and
  - c. any other labels or packaging to which a counterfeit trademark has been applied, and that has been used in the commission of the offence.
2. With respect to the offences specified in Article J.17 (Criminal Offences) and Article J.18 (Aiding and Abetting), each party shall provide that in cases in which the destruction of counterfeit trade mark goods or pirated copyright goods is not ordered, the competent authorities shall ensure that other than in exceptional circumstances those goods are disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder.
3. With respect to the offences specified in Article J.17(Criminal Offences) and Article J.18 (Aiding and Abetting), each Party shall provide that in cases in which forfeiture or destruction is ordered, it shall occur without compensation of any kind to the offender.
4. With respect to the offences specified in Article J.17(Criminal Offences) and Article J.18 (Aiding and Abetting), each Party shall provide that its competent authorities shall have the authority in accordance with each Party's law:
  - a. to order the forfeiture of any assets derived from or obtained through infringing activity;  
or
  - b. to impose a fine, the value of which corresponds to the assets from, or obtained directly or indirectly through the infringing activity.

## **Article J.22: Evidence Held by Competent Authorities**

Each party shall provide that its competent authorities shall have the authority to release, or in the alternative, at least provide access to, goods, material, implements, and other evidence held by the relevant authority to a right holder for civil infringement proceeding.

## **Article J.25: Penalties**

1. With respect to the offences specified in Article J.17(Criminal Offences) and Article J.18 (Aiding and Abetting), each Party shall provide for penalties that include imprisonment and monetary fines sufficiently high to provide a deterrent to future acts of infringement consistent with the level of penalties applied for crimes of a corresponding gravity.
2. Each Party shall provide that its competent authorities may, in determining penalties, account for the seriousness of the circumstances, which may include circumstances that involve threats to, or effects on, health, safety or both.

## **Sub-Section 5: Enforcement in The Digital Environment**

### **Article J.14: General Obligations**

1. Each Party shall provide that the enforcement measures, procedures, and remedies, referred to in subsection 2 (Civil Enforcement) and 4 (Criminal Enforcement), as applicable, are available under its law to proceed against an act of infringement of intellectual property rights which takes place in the digital environment.
2. Without prejudice to the obligations contained in paragraph 1, each Party shall also implement the obligations in paragraph 1 by providing that its enforcement measures, procedures and remedies apply to the infringement of copyright and related rights over digital networks, which may include the use of means of widespread distribution for infringing purposes, and to the infringement of trademarks, including through electronic commerce platforms and social media.

### **Article J.25: Limited Liability of Online Service Providers**

1. The Parties recognise that the services of OSPs<sup>18</sup> are increasingly used in the course of the infringement of intellectual property rights and that Online Service Providers are often in the best position to bring such infringing activities to an end.
2. Each Party shall establish or maintain a system that applies in appropriate cases to limit the liability of, or remedies available against an OSP for the infringement of intellectual property rights by a user of its services.
3. Each party shall ensure that the system established or maintained pursuant to paragraph 2 includes conditions to qualify for the limitation, in accordance with a Party's law, including, where practicable, requiring the OSP to take action to prevent access to the materials infringing intellectual property rights.
4. This Article shall not affect the possibility of a court or administrative authority, in accordance with the legal system of a Party, requiring the OSP to terminate or prevent an infringement, including by the grant of an injunction pursuant to Article J.4 (Provisional and Precautionary Measures), Article 1.6 (Injunctions) or Article J.26 (Blocking Orders).

### **Article J.26: Blocking Orders**

1. Each Party shall ensure that injunctions as provided for in Article J.4 (Provisional and Precautionary Means) and Article J.6 (Injunctions)]:
  - a. are available against an OSP, where its online services are used by a third party to infringe an intellectual property right; and
  - b. include injunctions requiring that OSPs disable access to infringing content.

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<sup>18</sup> For the purposes of this Section, OSPs means online service providers.

### **Article J.27: Domain Registries**

1. Each Party shall encourage their domain registry to provide the use of measures that appropriately, timely, and effectively suspend domains used in the infringement of intellectual property on their respective ccTLD.<sup>19</sup>
2. This requirement may be satisfied by a process facilitating cooperative maintenance between the relevant domain registry, law enforcement and industry groups.

### **Article J.28: Disclosure of Information**

Each Party shall provide, in accordance with its law, that its competent authorities may order an OSP to disclose to a right holder information sufficient to identify a subscriber whose account allegedly was used for infringement, where that right holder has filed a legally sufficient claim of trade mark or copyright or related rights infringement, and where such information is being sought for the purpose of protecting or enforcing those rights.

### **Enforcement Practices**

#### **Article J.29: Publication of Judicial Decisions**

1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights are:
  - a. made available preferably in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based; and
  - b. published or, if publication is not practicable, decisions should be made otherwise available to the public in a national language in such a manner as to enable interested persons and parties to become acquainted with them.
2. Each Party shall provide that judicial authorities may order, at the request of the applicant and at the expense of the infringer, additional publicity measures which are appropriate to the circumstances. The measures may include prominent advertising or display of the decisions.

#### **Article J.30: Access to Justice**

1. The Parties recognise the importance of ensuring that all right holders have access to justice and recognise that SMEs can disproportionately face barriers to their international trade due to unwarranted costs and delays in enforcing their intellectual property rights.
2. Each Party shall ensure that, for the enforcement of intellectual property rights:
  - a. alternate dispute resolution (ADR) mechanisms are available; and
  - b. ADR is encouraged and facilitated.

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<sup>19</sup> For greater certainty, this Article shall not be construed as prejudicing the independence of each Party's domain registry

3. Each Party shall use best endeavours to further facilitate access to justice for all rights holders. Such measures may include:
  - a. provision of specialist intellectual property courts or judges;
  - b. a simplified adjudication process for infringement claims which are less complex or have a lesser value.

#### **Article J.31: Voluntary Stakeholder Initiatives**

Each Party shall endeavour to promote cooperative efforts within the business community to address effectively intellectual property infringement, including in the digital environment, while preserving legitimate competition. This may include encouraging the establishment of public or private advisory groups to address issues of at least trade mark counterfeiting and Copyright piracy.

#### **Article J.32: Public Awareness**

Each Party shall, as appropriate, use reasonable efforts to enhance public awareness of the importance of respecting intellectual property rights, including in the digital environment and the detrimental effect of the infringement of intellectual property rights. This may include cooperation with the business community, civil society organisations, and right holder representatives.

#### **Article J.33: Specialised Expertise and Domestic Coordination**

1. Each Party shall use best efforts to develop specialised expertise within its competent authorities responsible for the enforcement of intellectual property rights, including with respect to infringement taking place in the digital environment.
2. Each Party shall use best efforts to ensure that the enforcement of intellectual property rights is coordinated effectively between its competent authorities.<sup>20</sup>

#### **Article J.34: Environmental Considerations**

Without prejudice to the obligations arising from Article J.7 (Corrective Measures), Article J.21 (Seizure), Article 72 (Forfeiture and Destruction of Goods) and [Article J.38 (Trade Secret Corrective Measures) the Parties recognise the importance of having due regard to environmental matters in their enforcement practices relating to the destruction and disposal of goods that have been found to infringe intellectual property rights.

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<sup>20</sup> For the avoidance of doubt, this paragraph does not create any new international coordination obligations between the Parties' competent authorities

## **Sub-Section 7: Trade Secret Enforcement**

### **Article J.35: Provisional Measures for Trade Secret Holders**

1. In civil judicial proceedings each Party shall provide its judicial authorities with the authority to order provisional measures to prevent the disclosure, acquisition, or use of a trade secret in a manner contrary to honest commercial practices, including:
  - a. Ceasing or prohibiting the disclosure or use of the trade secret;
  - b. prohibiting the production, offering, placing on the market or use of infringing goods, or the import, export, or storage of infringing goods for those purposes; and
  - c. seizure or delivery up of the suspected infringing goods, including imported goods, so as to, prevent their entry, into or circulation on, the market.

### **Article J.36 Injunctive Relief for Trade Secret Holders**

In civil judicial proceedings each Party shall provide its judicial authorities with the authority to order the cessation or prohibition of the disclosure, acquisition, or use of trade secret in a manner contrary to honest commercial practices.

### **Article J.37: Damages Available to Trade Secret Holders**

In civil judicial proceedings, each Party shall provide that its judicial authorities with the authority to order that the person that knew, or ought to have known that they were disclosing, acquiring or using a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages appropriate to compensate for the injury suffered.

### **Article J.58: Trade Secret Corrective Measures**

[The UK will propose text on corrective measures at a later date]

### **Article J.39: Protection of Trade Secret Confidentiality During Judicial Proceedings**

1. In civil judicial proceedings each Party shall provide its judicial authorities with the authority to:
  - a. Order that the parties to those proceedings, their lawyers and other persons in those proceedings are not permitted to disclose or use any trade secret or allied trade secret which the judicial authorities have identified as confidential, in response to a duly reasoned application by an interested party and on which these parties, lawyers and other persons have become aware as a result of their participation in the proceedings;
  - b. take measures to preserve the confidentiality of any trade secret or alleged trade secret in the proceedings relating to the alleged disclosure, acquisition or use of a trade secret in a manner contrary to honest commercial practices. Such specific measures may include restricting access to certain documents in whole or in part, restricting access to hearings and corresponding records or transcript, and making available non-confidential versions of a judicial decision with trade secrets removed or redacted: and

- c. impose sanctions on the parties to the proceedings, their lawyers and other persons concerned for violation of judicial orders referred to in paragraph a concerning the protection of a trade secret or alleged trade secret produced in those proceedings.