

CHAPTER 13 INTELLECTUAL PROPERTY

SECTION 13-A PRINCIPLES

Article 13.1 Scope and Definitions

1. The Parties recall the commitments under the international treaties dealing with intellectual property, including the TRIPS Agreement and the *Paris Convention for the Protection of Industrial Property* (of 20 March 1883, as revised at Stockholm on 15 July 1967). The provisions of this Chapter shall complement the rights and obligations of the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property to which they both are parties.
2. For the purposes of this Chapter, “**intellectual property rights**” means:
 - (i) copyright and related rights;
 - (ii) patents;
 - (iii) trademarks;
 - (iv) designs;
 - (v) layout-designs (topographies) of integrated circuits;
 - (vi) geographical indications; and
 - (vii) protection of undisclosed information.

Article 13.2 Exhaustion

Each Party shall be free to establish its own regime for the exhaustion of intellectual property rights subject to the relevant provisions of the TRIPS Agreement.

SECTION 13-B
STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 13-B-1
COPYRIGHT AND RELATED RIGHTS

Article 13.3
Protection Granted

The Parties shall comply with the rights and obligations set out in the *Berne Convention for the Protection of Literary and Artistic Works* (of 9 September 1886, as last revised at Paris on 24 July 1971), and the TRIPS Agreement. The Parties may provide for the protection of performers, producers of phonograms and broadcasting organisations in accordance with the relevant provisions of the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* (done at Rome on 26 October 1961).¹

Article 13.4
Term of Protection

1. Each Party shall provide, where the term of protection of a work is to be calculated on the basis of the life of the author, that the term shall be not less than the life of the author and seventy (70) years after the author's death.
2. In the case of a work of joint authorship, the term referred to in paragraph 1 of this Article shall be calculated from the death of the last surviving author.
3. The term of protection of cinematographic works² shall be not less than seventy (70) years after the work has been made available to the public with the consent of the author or, failing such an event within fifty (50) years from the making of such a work, at least seventy (70) years after the making.
4. The term of protection to be granted to producers of phonograms under this Agreement shall last, at least, until the end of a period of fifty (50) years computed from the end of the year in which the phonogram was published, or failing such publication within fifty (50) years from fixation of the phonogram, fifty (50) years from the end of the year in which the fixation was made.
5. The term of protection for rights in broadcasts shall be not less than fifty (50) years after the first transmission or making of the broadcast.
6. The terms laid down in this Article shall be calculated based on the event which gives rise to them in the manner provided by the Parties' respective domestic legislation.

¹ The Parties recognise that references to these international agreements are subject to the reservations which each Party has formulated in relation thereto.

² For purposes of this paragraph, "cinematographic works" shall mean the same as "audio-visual works".

Article 13.5
Presumptions Relating to Copyright and Related Rights

In civil proceedings involving copyright or related rights, each Party shall provide for a presumption that, at least with respect to a literary or artistic work, performance or phonogram, in the absence of proof to the contrary, the person whose name appears on such work, performance or phonogram in the usual manner, is the right holder and is consequently entitled to institute infringement proceedings.

Article 13.6
Cooperation on Collective Management of Rights

The Parties shall endeavour to promote dialogue and cooperation among their respective collective management societies with the purpose of ensuring easier access and delivery of content between the territories of the Parties, and the transfer of royalties arising from the use of works or other copyright-protected subject matter.

SUB-SECTION 13-B-2
TRADEMARKS

Article 13.7
International Agreements

The Parties shall comply with all international agreements on trademarks to which they have ratified or will ratify, including the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (adopted at Madrid on June 27, 1989, as amended on October 3, 2006 and on November 12, 2007).

Article 13.8
Registration Procedure

Each Party shall provide for a system for the registration of trademarks in which the relevant trademark administration shall give reasons for a refusal to register a trademark in writing. The applicant shall have the opportunity to appeal against such refusal before a judicial authority. Each Party shall introduce the possibility for third parties to oppose trademark applications. Each Party shall provide a publicly available electronic database of trademark applications and trademark registrations.

Article 13.9
Well-Known Trademarks

The Parties shall protect well-known trademarks in accordance with the TRIPS Agreement. In determining whether a trademark is well-known, the Parties agree to take into consideration 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 WIPO on 20 to 29 September 1999).

Article 13.10
Exceptions to the Rights Conferred by a Trademark

Each Party:

- (a) shall provide for the fair use of descriptive terms³ as a limited exception to the rights conferred by trademarks; and
- (b) may provide for other limited exceptions, including for the purpose of adopting measures necessary to protect public health and nutrition;

provided that these exceptions take account of the legitimate interests of the owners of the trademarks and of third parties.

SUB-SECTION 13-B-3
GEOGRAPHICAL INDICATIONS⁴

Article 13.11
Scope

1. This Sub-Section applies to the recognition and protection of geographical indications for goods originating in the territories of the Parties.
2. Geographical indications of a Party to be protected by the other Party shall only be subject to this Sub-Section if they are recognised and declared as geographical indications in their country of origin.

Article 13.12
System of Protection of Geographical Indications

With the recognition of the importance of the protection of geographical indications, each Party shall provide a system for the protection of geographical indications in accordance with Section 3 (Geographical Indications), Part II of the TRIPS Agreement and protect the geographical indications of the other Party in accordance with its legislation⁵.

³ The fair use of descriptive terms includes the use of a sign to indicate the geographic origin of the goods or services, and where such use is in accordance with honest practices in industrial or commercial matters.

⁴ For the purposes of this Chapter, “geographical indications” means indications which identify a good as 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 attributable to its geographical origin.

⁵ For greater certainty, the Parties acknowledge that geographical indications will be recognised and protected by the Parties only to the extent permitted by and according to the terms and conditions set out in their respective domestic laws.

SUB-SECTION 13-B-4 DESIGNS

Article 13.13 Requirements for Protection of Registered Designs

1. The Parties shall provide for the protection of independently created designs that are new. This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with the provisions of this Sub-Section.⁶
2. Design protection shall not extend to designs dictated essentially by technical or functional considerations.
3. A design right shall not subsist in a design which is contrary to public order or to accepted principles of morality.⁷

Article 13.14 Rights Conferred by Registration

The owner of a protected design shall have the right to prevent third parties, not having the owner's consent, from at least making, offering for sale, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

Article 13.15 Term of Protection

The duration of protection available shall be consistent with Article 26.3 of the TRIPS Agreement.

Article 13.16 Exceptions

The Parties may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

⁶ It is understood that designs are not excluded from protection simply on the basis that they constitute a part of an article or product, provided that they are visible, fulfil the criteria of this paragraph, and:

- (a) fulfil any other criteria for design protection; and
- (b) are not otherwise excluded from design protection,

under the Parties' respective domestic law.

⁷ Nothing in this Article precludes either Party from providing other specified exclusions from design protection under its domestic law. The Parties understand that such exclusions shall not be extensive.

SUB-SECTION 13-B-5 PATENTS

Article 13.17 International Agreements

The Parties shall comply with the obligations under the *Patent Cooperation Treaty* (done at Washington on 19 June 1970, amended on 28 September 1979 and modified on 3 February 1984) (“PCT”).

Article 13.18 Patents and Public Health

1. The Parties recognise the importance of the *Declaration on the TRIPS Agreement and Public Health* (adopted in Doha on 14 November 2001 by the Ministerial Conference of the WTO). In interpreting and implementing the rights and obligations under this Sub-Section, the Parties shall ensure consistency with this Declaration.
2. The Parties shall respect the Decision of the WTO General Council of 30 August 2003 on *Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*, as well as the Decision of the WTO General Council of 6 December 2005 on *Amendment of the TRIPS Agreement*, adopting the *Protocol Amending the TRIPS Agreement*.
3. The Parties shall explore cooperation in the granting of patents on the basis of applications filed by applicants of a Party in the other Party, and patent examination and work sharing. Further, desiring to establish a mutually supportive relationship between the Parties, the Parties agree as follows:
 - (a) Sri Lanka hereby recognises and designates the Intellectual Property Office of Singapore (“IPOS”) as a competent International Search Authority (“ISA”) or International Preliminary Examination Authority (“IPEA”) under the PCT for international applications received by Sri Lanka, as well as for search and examination of national patent applications; and
 - (b) conditional upon the National Intellectual Property Office of Sri Lanka (“NIPOS”) and the International Bureau of WIPO entering into an agreement in relation to the functioning of NIPOS as an ISA and/or IPEA under Articles 16 and 23 of the PCT, Singapore shall designate NIPOS as an ISA and/or IPEA under the PCT for international applications received by Singapore insofar as these applications are submitted in the English language.

SECTION 13-C ENFORCEMENT

Article 13.20 Enforcement of Intellectual Property Rights

1. The Parties shall provide suitable and effective protection of intellectual and industrial property rights in line with the TRIPS Agreement and other international agreements to which both Parties are party. The Parties shall ensure enforcement procedures as specified in Part III of the TRIPS Agreement so as to permit effective action against any act of infringement of intellectual property rights.
2. In particular, the measures, procedures and remedies referred to in paragraph 1 of this Article, and provided for by each Party under its domestic law, shall:
 - (a) take into account, as appropriate, the need for proportionality between the seriousness of the infringement and the interests of third parties;
 - (b) be fair and equitable;
 - (c) not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays; and
 - (d) be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.
3. Nothing in this Chapter affects the capacity of either Party to enforce its domestic law in general or creates any obligation on either Party to amend its existing laws as they relate to the enforcement of intellectual property rights. Without prejudice to the foregoing general principles, nothing in this Chapter creates any obligation on either Party:
 - (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general; or
 - (b) with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

Article 13.21 Publication of Judicial Decisions

In civil judicial proceedings instituted for infringement of an intellectual property right, each Party shall take appropriate measures, pursuant to its domestic law and policies, to publish or make available to the public information on final judicial decisions. Nothing in this Article shall require a Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 13.22
Legal Costs

Each Party shall provide that its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of intellectual property rights, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under that Party's domestic law.

SECTION 13-D
CO-OPERATION

Article 13.23
Co-operation

1. The Parties agree to co-operate with a view to supporting the implementation of the commitments and obligations undertaken in this Chapter. Areas of co-operation include, but are not limited to, the following activities:
 - (a) exchange of information on legal frameworks concerning intellectual property rights, including those pertaining to the implementation of intellectual property legislation and systems, aimed at promoting the efficient registration of intellectual property rights;
 - (b) exchange, between the respective authorities responsible for the enforcement of intellectual property rights, of their experiences and best practices concerning enforcement of intellectual property rights;
 - (c) exchange of information and co-operation on public outreach and appropriate initiatives to promote awareness of the benefits of intellectual property rights and systems;
 - (d) capacity-building and technical co-operation in relation, but not limited, to: management, licensing, valuation and exploitation of intellectual property rights; technology and market intelligence; facilitation of industry collaborations, including on intellectual property rights that may be applied towards environmental conservation or enhancement which may include establishing a platform or database; and public private partnerships to support culture and innovation;
 - (e) exchange of information and co-operation on intellectual property issues, where appropriate and relevant to developments in environmentally friendly technology; and
 - (f) any other areas of co-operation or activities as may be discussed and agreed between the Parties.

2. Without prejudice to paragraph 1 of this Article, the Parties agree to designate a contact point for the purpose of maintaining dialogue including, where useful, convening meetings on intellectual property issues between their respective technical experts on matters covered by this Chapter.
3. Co-operation under this Chapter shall be carried out subject to each Party's laws, rules, regulations, directives or policies. Co-operation shall also be on mutually agreed terms and conditions and be subject to the availability of resources of each Party.