CHAPTER 14

**INTELLECTUAL PROPERTY**

Section A: General Provisions

**Article 14.1**

**Definitions**

For the purposes of this Chapter:

**intellectual property** refers to:

(a) copyright and related rights;

(b) patents and utility models;

(c) trademarks;

(d) industrial designs;

(e) layout designs (topographies) of integrated circuits;

(f) geographical indications;

(g) protection of plant varieties; and

(h) protection of undisclosed information;

**national** means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 14.6 (International Agreements); and

**TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights* in Annex 1C to the WTO Agreement.

**WIPO** means the World Intellectual Property Organization.

**Article 14.2**

**Objectives**

The protection and enforcement of intellectual property rights should contribute to the promotion of trade, investment, technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

**Article 14.3**

**Understandings in respect of this Chapter**

Having regard to the underlying public policy objectives of national systems, the Parties recognise the need to:

(a) promote innovation and creativity;

(b) facilitate the diffusion of information, knowledge, technology, culture, and the arts; and

(c) foster competition and open and efficient markets,

through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, service providers, users, and the general public.

**Article 14.4**

**Principles**

1. Nothing in this Chapter shall prevent a Party from adopting appropriate measures to prevent the abuse of intellectual property rights by right holders or the resort to practices that unreasonably restrain trade or adversely affect the international transfer of technology, provided that such measures are consistent with the provisions of this Chapter.

2. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter.

**Article 14.5**

**Nature and Scope of Obligations**

Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, including enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection including enforcement, does not contravene the provisions of this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

**Article 14.6**

**International Agreements**

The Parties affirm their rights and obligations set out in the following multilateral agreements:

(a) TRIPS Agreement;

(b) *Patent Cooperation Treaty* done at Washington on 19 June 1970, as amended on 28 September 1979, and modified on 3 February 1984 and on 3 October 2001 (“PCT”);

(c) *Paris Convention for the Protection of Industrial Property* done at Paris on 20 March 1883 as revised at Stockholm on 14 July 1967 as amended on 28 September 1979 (“Paris Convention”);

(d) *Berne Convention for the Protection of Literary and Artistic Works* done at Berne on 9 September 1886, as revised at Paris on 24 July 1971 and amended on 28 September 1979 (“Berne Convention”);

(e) *Protocol relating to the Madrid Agreement concerning the International Registration of Marks* done at Madrid on 27 June 1989;

(f) *WIPO Performances and Phonogram Treaty* done at Geneva on 20 December 1996 (“WPPT”);

(g) *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* done at Rome on26 October 1961 (“Rome Convention”);

(h) *WIPO Copyright Treaty* done at Geneva on 20 December 1996 (“WCT”);

(i) *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* done at Budapest on 28 April 1977, as amended on 26 September 1980;

(j) *Marrakesh Treaty* *to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled* done at Marrakesh on 27 June 2013; and

(k) *International Convention for the Protection of New Varieties of Plants* done at Paris on 2 December 1961, as revised at Geneva on 19 March 1991.

**Article 14.7**

**Intellectual Property and Public Health**

1. The Parties affirm the *Doha Declaration on the* *TRIPS Agreement and Public Health* adopted on 14 November 2001 (“the Doha Declaration”). In particular, the Parties have reached the following understandings regarding this Chapter:

(a) the Parties affirm the right to fully use the flexibilities as duly recognised in the Doha Declaration;

(b) the Parties agree that this Chapter does not and should not prevent a Party from taking measures to protect public health; and

(c) the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party’s right to protect public health and, in particular, to promote access to medicines for all.

2. In recognition of the Parties’ commitment to access to medicines and public health, this Chapter does not and should not prevent the effective utilisation of Article 31*bis* of the TRIPS Agreement, and the Annex and Appendix to the Annex to the TRIPS Agreement.

3. The Parties recognise the importance of contributing to the international efforts to implement Article 31*bis* of the TRIPS Agreement, and the Annex and Appendix to the Annex to the TRIPS Agreement.

**Article 14.8**

**National Treatment**

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1. Each Party shall accord to the nationals of other Parties treatment no less favourable than that it accords to its own nationals with regard to the protection[[1]](#footnote-2) of intellectual property, subject to the exceptions provided in the TRIPS Agreement and in the multilateral agreements administered by the “WIPO”), to which a Party is party.

2. A Party may avail itself of the exceptions referred to in paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of another Party to designate an address for service of process in its territory, or to appoint an agent in its territory, only if such exceptions are:

(a) necessary to secure compliance with its laws and regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

3. The obligations under paragraph 1 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

**Article 14.9**

**Transparency**

1. Each Party shall endeavour to provide that final judicial decisions and administrative rulings of general application that pertain to the availability, scope, acquisition, enforcement, and prevention of the abuse of intellectual property rights shall be published, or where such publication is not practicable, made publicly available, in at least a national language of that Party in such a manner as to enable the other Party and right holders to become acquainted with them. Each Party shall endeavour to provide that such final judicial decisions be published online, where feasible.[[2]](#footnote-3)

2. Each Party shall take appropriate measures, to the extent possible under its laws and regulations, to publish or make available to the public, information on applications and registrations of trademarks, geographical indications, patents, and designs, and where applicable, legal status information thereof, such as registration and expiration date. Each Party shall endeavour to provide these measures in regards to plant variety rights.

3. Each Party shall endeavour to make available the information referred to in paragraphs 1 and 2 in the English language.

**Article 14.10**

**Application of Chapter to Existing Subject Matter and Prior Acts**

1. Unless otherwise provided in this Chapter, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement for a Party and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter without unreasonably impairing the fair interest of third parties.

2. Unless provided in this Chapter, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement for that Party has fallen into the public domain in its territory.

**Article 14.11**

**Exhaustion of Intellectual Property Rights**

Each Party shall be free to establish its own regime for exhaustion of intellectual property rights.

Section B: Cooperation

**Article 14.12**

**Cooperation Activities and Initiatives**

The Parties may cooperate on the subject matter covered by this Chapter, such as through appropriate coordination, training and exchange of information between the respective intellectual property authorities or relevant agencies of the Parties, or other institutions, as determined by each Party. Cooperation activities and initiatives undertaken under this Chapter shall be done on request, subject to the availability of resources, and on terms and conditions mutually agreed upon between the Parties. Cooperation may cover areas such as:

(a) developments in domestic and international intellectual property policy;

(b) intellectual property administration and registration systems;

(c) education and awareness relating to intellectual property;

(d) intellectual property issues relevant to:

(i) small and medium-sized enterprises;

(ii) science, technology and innovation activities;

(iii) the generation, transfer and dissemination of technology; and

(vi) empowering women and youth;

(e) policies involving the use of intellectual property for research, innovation and economic growth; and

(f) enforcement of intellectual property rights including:

(i) exchanging information on measures and procedures related to enforcing and protecting intellectual property rights and;

(ii) sharing experiences on efforts to reduce and combat counterfeiting and piracy.

Section C: Trademarks

**Article 14.13**

**Types of Signs Registrable as Trademarks**

No Party shall require, as a condition of registration, that a sign be visually perceptible, nor shall a Party deny registration of a trademark only on the ground that the sign of which it is composed is a sound. Additionally, each Party shall make best efforts to register scent marks. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trademark.

**Article 14.14**

**Collective and Certification Marks**

Each Party shall provide that trademarks include collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in its law, provided that those marks are protected. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system.[[3]](#footnote-4)

**Article 14.15**

**Use of Identical or Similar Signs**

Each Party shall provide that the owner of a registered trademark has the exclusive right to prevent third parties that do not have the owner’s consent from using in the course of trade identical or similar signs, including subsequent geographical indications, for goods or services that are identical or similar to those goods or services in respect of which the owner’s trademark 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. [[4]](#footnote-5) [[5]](#footnote-6)

**Article 14.16**

**Exceptions**

A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that those exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

**Article 14.17**

**Protection of Trademarks that Predate Geographical Indications**

Each Party shall protect trademarks where they predate, in its jurisdiction, geographical indications, in accordance with the TRIPS Agreement.

**Article 14.18**

**Well-Known Trademarks**

1. Each Party shall provide for appropriate measures to refuse or cancel the registration, and to prohibit the use,[[6]](#footnote-7) of a trademark that is identical or similar to a well-known trademark[[7]](#footnote-8), [[8]](#footnote-9) for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well-known trademark.

2. No Party shall require, as a condition for determining that a trademark is a well-known trademark, that the trademark has been registered in that Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.

**Article 14.19**

**Bad Faith Trademarks**[[9]](#footnote-10)

Each Party shall provide that its competent authority has the authority to refuse an application or cancel a registration where the application to register the trademark was made in bad faith in accordance with its laws and regulations.

**Article 14.20**

**One and the Same Application Relating to Several Goods or Services**

Each Party shall provide that one and the same application for registration of a trademark may relate to several goods or services, or any combination thereof, irrespective of whether they belong to one class or to several classes of the Nice Classification.

**Article 14.21**

**Procedural Aspects of Examination, Opposition and Cancellation**

Each Party shall provide a system for the examination and registration of trademarks which includes among other things:

(a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trademark;

(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 final refusal to register a trademark;

(c) providing an opportunity to oppose the registration of a trademark or to seek cancellation of a trademark; and

(d) requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which may be provided by electronic means.

**Article 14.22**

**Electronic Trademarks System**

Each Party shall provide:

(a) a system for the electronic application for, and maintenance of, trademarks; and

(b) a publicly available electronic information system, including an online database, of trademark applications and of registered trademarks.

**Article 14.23**

**Classification of Goods and Services**

Each Party shall adopt or maintain a trademark classification system that is consistent with the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*, done at Nice on 15 June 1957, (“Nice Classification”). Each Party shall provide that:

(a) registrations and the publications of applications indicate the goods and services by their names, grouped according to the classes established by the Nice Classification;[[10]](#footnote-11) and

(b) goods or services may not be considered as being similar to each other on the ground that, in any registration or publication, they are classified in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication, they are classified in different classes of the Nice Classification.

**Article 14.24**

**Term of Protection for Trademarks**

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

**Article 14.25**

**Non-Recordal of a License**

No Party shall require recordal of trademark licenses:

(a) to establish the validity of the license; or

(b) as a condition for use of a trademark by a licensee to be deemed to constitute use by the holder in a proceeding that relates to the acquisition, maintenance or enforcement of trademarks.

Section D: Geographical Indications

**Article 14.26**

**Protection of Geographical Indications**

Each Party shall ensure in its laws and regulations adequate and effective means to protect geographical indications. Each Party recognises that such protection may be provided through a trademark system, a *sui generis* system, or other legal means, provided that all requirements under the TRIPS Agreement are fulfilled.[[11]](#footnote-12)

**Article 14.27**

**Procedures for the Protection of Geographical Indications**

The Parties shall provide procedures for the protection of Geographical Indications including for application and opposition, and ensure that their laws, regulations and guidance are readily available to the public.

**Article 14.28**

**Date of Protection of a Geographical Indication**

If a Party grants protection to a geographical indication, the protection shall commence no earlier than the filing date[[12]](#footnote-13) or the registration date in that Party according to the Party’s laws and regulations.

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# Section E – Patents

**Article 14.29**

**Patentable Subject Matter**

1. Subject to paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step, and are capable of industrial application.[[13]](#footnote-14) Subject to paragraph 3, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology, and whether products are imported or locally produced.

2. A Party may exclude from patentability inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect public order or morality, including to protect human, animal or plant life or health, or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its laws and regulations.

3. 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. However, each Party shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. The Parties shall review this subparagraph upon any amendment to subparagraph 3(b) of Article 27 of the TRIPS Agreement with a view to deciding whether to adopt a similar amendment to this subparagraph.

**Article 14.30**

**Rights Conferred**

1. Each Party shall provide that a patent shall confer on its owner the following exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner’s consent from the acts of making, using, offering for sale, selling, or importing[[14]](#footnote-15) for these purposes that product; and

(b) where the subject matter of a patent is a process, to prevent third parties not having the owner’s consent from the act of using the process, and from the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

**Article 14.31**

**Grace Period**

Each Party shall disregard information contained in public disclosure[[15]](#footnote-16)used to determine if an invention is novel or has an inventive step if the public disclosure:

(a) was made or authorised by, or derived from, the patent applicant,[[16]](#footnote-17) and

(b) occurred within 12 months prior to the date of filing in the territory of the Party of the application.

**Article 14.32**

**18-Month Publication**

1. Each Party shall publish any patent application promptly after the expiry of 18 months from its filing date or, if priority is claimed, from its earliest priority date, unless the application has been published earlier, or has been withdrawn, abandoned or refused.[[17]](#footnote-18)

2. If a pending application is not published promptly in accordance with paragraph 1, the Party shall publish that application or the corresponding patent as soon as practicable.

3. Nothing in this Article shall be construed to require a Party to publish any information the disclosure of which it considers to be contrary to its national security or to public order or morality.

4. Each Party shall provide that the applicant may request the early publication of an application prior to the expiry of the period referred to in paragraph 1.

**Article 14.33**

**Procedural Aspects of Examination and Registration**

Each Party shall provide a system for the examination and registration of patents which includes among other things:

(a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a patent;

(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 final refusal to register a patent;

(c) providing an opportunity for interested parties to seek cancellation or invalidation of a registered patent, and in addition may provide an opportunity for interested parties to oppose the registration of a patent; and

(d) making decisions in opposition, cancellation, or invalidation proceedings to be reasoned and in writing, which may be delivered by electronic means.

**Article 14.34**

**Amendments, Corrections, and Observations**

Each Party shall provide an applicant for a patent with at least one opportunity to make amendments, corrections or observations in connection with its application.

**Article 14.35**

**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 right holder, taking account of the legitimate interests of third parties.

**Article 14.36**

**Other Use Without Authorisation of the Right Holder**

For greater certainty, nothing in this Agreement shall limit a Party’s rights and obligations under Article 31 and Article 31*bis* of the TRIPS Agreement, and the Annex and Appendix to the Annex to the TRIPS Agreement.

**Article 14.37**

**Experimental Use of a Patent**

Without limiting Article 14.35 (Exceptions), each Party may, in accordance with its laws and regulations, provide that any person may do an act that would otherwise infringe a patent if the act is done for experimental purposes[[18]](#footnote-19) relating to the subject matter of a patented invention.

**Article 14.38**

**Regulatory Review: Exception**

Without prejudice to the scope of, and consistent with, Article 30 of TRIPS, each Party may, in accordance with its laws and regulations, provide that a third person may do an act that would otherwise infringe a patent, if the act is done for purposes connected with obtaining regulatory approval in that Party, another country or both.

**Article 14.39**

**Protection of New Varieties of Plants**

Each Party shall provide for the protection of new varieties of plants through an effective *sui generis* plant variety protection according to the Party’s law and regulations.

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# Section F: Industrial Designs

**Article 14.40**

**Industrial Design Protection**

1. The Parties shall ensure that requirements for securing or enforcing registered industrial design protection do not unreasonably impair the opportunity to obtain or enforce such protection.

2. Each Party confirms that protection for industrial designs is available for designs:

(a) embodied in a part of an article; or, alternatively;

(b) having a particular regard, where appropriate, to a part of an article in the context of the article as a whole, in accordance with its laws and regulations.

3. The duration of protection available for registered industrial designs shall amount to at least 10 years from the date of filing.

**Article 14.41**

**Procedural Aspects of Examination and Registration**

Each Party shall provide a system for the examination and registration[[19]](#footnote-20) of industrial designs which includes among other things:

(a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register an industrial design;

(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 final refusal to register an industrial design;

(c) providing an opportunity for interested parties to seek cancellation or invalidation of a registered industrial design, and in addition may provide an opportunity for interested parties to oppose the registration of an industrial design; and

(d) making decisions in opposition, cancellation, or invalidation proceedings to be reasoned and in writing, which may be delivered by electronic means.

**Article 14.42**

**Introduction of International Classification System for Industrial Designs**

Each Party shall endeavour to use a classification system for industrial designs that is consistent with the *Locarno Agreement Establishing an International Classification for Industrial Designs* signed at Locarno on 8 October 1968, and any amendments thereto.

**Article 14.43**

**Exceptions**

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

Section G: Copyright and Related Rights

**Article 14.44**

**Exclusive Rights of Authors, Performers, Producers of Phonograms, and Broadcasting organisations**

1. Without prejudice to the obligations set out in the international agreements to which the Parties are parties and in accordance with its laws and regulations, each Party shall provide to authors of works the exclusive right to authorise any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

2. Without prejudice to the obligations set out in the international agreements to which the Parties are parties and in accordance with its laws and regulations, each Party shall provide to performers and producers of phonograms the exclusive right to authorise the making available to the public of their performances fixed in phonograms and phonograms, respectively, 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.

3. Without prejudice to the obligations set out in the international agreements to which the Parties are parties and in accordance with its laws and regulations, each Party shall provide to authors, performers, and producers of phonograms the exclusive right to authorise or prohibit the reproduction of their works, performances fixed in phonograms, and phonograms in any manner or form.

4. The Parties shall, in accordance with their respective laws and regulations and international agreements to which the Parties are parties, provide adequate and effective protection of rights and interests pertaining to broadcasting organisations for their broadcasts.

**Article 14.45**

# Term of Protection for Copyright and Related Rights

The Parties shall provide that the term of protection of a work, performance or phonogram is to be calculated according to the international agreements to which the Parties are parties and their respective laws and regulations.

**Article 14.46**

# Limitations and Exceptions

1. Each Party shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.[[20]](#footnote-21)

2. Nothing in paragraph 1 shall reduce or extend the scope of applicability of the limitations and exceptions available to a Party as a party to the TRIPS Agreement, the Berne Convention, the Rome Convention, the WCT or the WPPT.

3. Each Party shall endeavour to provide an appropriate balance in its copyright and related rights system, among other things by means of limitations and exceptions consistent with paragraph 1, for legitimate purposes, which may include education, research, criticism, comment, news reporting, and facilitating access to published works for persons who are blind, visually impaired, or otherwise print-disabled.

**Article 14.47**

# Contractual Transfers

Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right[[21]](#footnote-22) in a work, performance or phonogram:

(a) may freely and separately transfer that right by contract; and

(b) by virtue of contract, including contracts of employment underlying the creation of works, performances or phonograms, shall be able to exercise that right in that person’s own name and enjoy fully the benefits derived from that right.[[22]](#footnote-23)

**Article 14.48**

# Circumvention of Effective Technological Measures

Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers, or producers of phonograms in connection with the exercise of their rights referred to in this Section and that restrict acts, in respect of their works, performances, or phonograms, which are not authorised by the authors, the performers, or the producers of phonograms concerned or permitted by the laws and regulations of that Party.

**Article 14.49**

# Protection for Electronic Rights Management Information

To protect electronic rights management information (RMI),[[23]](#footnote-24) each Party shall provide adequate and effective legal remedies against any person knowingly performing without authority any of the following acts knowing, or with respect to civil remedies with reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related rights referred to in this Chapter:

(a) removing or altering any electronic RMI; or

(b) distributing, importing for distribution, broadcasting, communicating, or making available to the public copies of works, performances fixed in phonograms, or phonograms, knowing that electronic RMI has been removed or altered without authority.

**Article 14.50**

**Limitations and Exceptions to Providing Protection and Remedies for Technological Measures and RMI**

1. Each Party may provide for appropriate limitations and exceptions to measures implementing Article 14.48 (Circumvention of Effective Technological Measures) and Article 14.49 (Protection for Electronic Rights Management Information) in accordance with its laws and regulations.

2. The obligations set out in Article 11.48 (Circumvention of Effective Technological Measures) and Article 14.49 (Protection for Electronic Rights Management Information) are without prejudice to the rights, limitations, exceptions, or defences to infringement of any copyright or related right under a Party’s laws and regulations.

**Article 14.51**

# Collective Management Organisations

1. Each Party shall endeavour to foster the establishment of appropriate organisations for the collective management of copyright and related rights. Each Party shall encourage such organisations to operate in a manner that is fair, efficient, publicly transparent, and accountable to their members, which may include open and transparent record keeping of the collection and distribution of royalties.[[24]](#footnote-25)

2. The Parties recognise the importance of fostering cooperation between their respective collective management organisations for the purposes of mutually ensuring easier licensing of content among the Parties, as well as encouraging[[25]](#footnote-26) mutual transfer of royalties for use of works or other copyright-protected subject matters of the nationals of another Party.

Section H: Enforcement

**Article 14.52**

# General Obligation in Enforcement

1. The Parties shall provide in their respective laws for the enforcement of intellectual property rights consistent with the TRIPS Agreement, in particular Articles 41 through 61.

2. Each Party shall ensure that enforcement procedures as specified in this Section are available under its law so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.[[26]](#footnote-27)

3. Each Party shall take measures to curtail infringement of copyright on the Internet or other digital environment.[[27]](#footnote-28)

**Article 14.53**

# Border Measures

1. Each Party shall, in conformity with its laws and regulations and the provisions of Part III, Section 4 of the TRIPS Agreement adopt or maintain procedures to enable a right holder, who has valid grounds for suspecting that the importations of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with the competent authorities, in the Party in which the border measure procedures are applied, for the suspension by that Party’s customs authorities of the release into free circulation of such goods.

2. A Party may enable an application to be made in respect of goods which involve infringements of other intellectual property rights, provided that the requirements of Part III, Section 4 of the TRIPS Agreement are met. A Party may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from its territory in accordance with its laws and regulations.

1. For the purposes of this paragraph, “protection” includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights, as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this paragraph, “protection” also includes the provisions concerning:

   (a) effective technological measures set out in Article 14.48 (Circumvention of Effective Technological Measures); and

   (b) rights management information set out in Article 14.49 (Protection for Electronic Rights Management Information). [↑](#footnote-ref-2)
2. For greater certainty, nothing in this paragraph shall require a Party to specify online publication in its laws and regulations. [↑](#footnote-ref-3)
3. Consistent with Article 14.26 (Protection of Geographical Indications), any sign or combination of signs shall be eligible for protection under one or more of the legal means for protecting geographical indications, or a combination of such means. [↑](#footnote-ref-4)
4. For greater certainty, the exclusive right in this Article applies to cases of unauthorised use of geographical indications with goods for which the trademark is registered, in cases in which the use of that geographical indication in the course of trade would result in a likelihood of confusion as to the source of the goods. [↑](#footnote-ref-5)
5. For greater certainty, the Parties understand that this Article should not be interpreted to affect their rights and obligations under Articles 22 and 23 of the TRIPS Agreement. [↑](#footnote-ref-6)
6. For greater certainty, a Party may comply with the obligation to provide for appropriate measures to prohibit the use of the trademark that is identical or similar to a well-known trademark under this paragraph by providing its judicial authorities with the authority to prohibit the use of such a trademark. [↑](#footnote-ref-7)
7. For the purposes of this paragraph, a Party may treat “a reproduction, an imitation, or a translation of a well-known trademark” as “identical or similar to a well-known trademark”. [↑](#footnote-ref-8)
8. The Parties understand that a well-known trademark is one that was already well-known before, as determined by a Party, the application for, registration of, or use of the first-mentioned trademark. [↑](#footnote-ref-9)
9. For the purposes of this Article, the competent authority of a Party may take into consideration whether the trademark is identical or similar to a well-known trademark of another person. [↑](#footnote-ref-10)
10. A Party that relies on translations of the Nice Classification shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published. [↑](#footnote-ref-11)
11. For greater certainty, Parties understand that this does not limit exceptions available under the TRIPS agreement, including its Article 24. [↑](#footnote-ref-12)
12. For greater certainty, the filing date referred to in this Article includes, as applicable, the priority filing date under the Paris Convention. [↑](#footnote-ref-13)
13. For the purposes of this Section, “inventive step” and “capable of industrial application” may be deemed by a Party to be synonymous with "non-obvious" and "useful", respectively. [↑](#footnote-ref-14)
14. This right, like all other rights conferred under this Chapter in respect of the use, sale, importation, or other distribution of goods, is subject to Article 14.11 (Exhaustion of Intellectual Property Rights). [↑](#footnote-ref-15)
15. For greater certainty, public disclosure includes disclosures made inside or outside the territory of the Parties. [↑](#footnote-ref-16)
16. For greater certainty a Party may implement this Article in accordance with the Party’s laws and regulations. [↑](#footnote-ref-17)
17. The Parties understand that, for the purposes of this Article, an application is withdrawn, abandoned, or refused in accordance with the respective Party’s laws and regulations. [↑](#footnote-ref-18)
18. For greater certainty, each Party may determine, consistent with Article 14.35 (Exceptions), what acts fall within the meaning of “experimental purposes”. [↑](#footnote-ref-19)
19. For greater certainty, for the purpose of the Section, Australia may interpret “registration” as “registration and certification.” [↑](#footnote-ref-20)
20. For greater certainty, this paragraph shall not prevent a Party from providing limitations or exceptions for broadcasts in accordance with multilateral agreements related to intellectual property to which that Party is, or becomes, party. [↑](#footnote-ref-21)
21. For greater certainty, this provision does not affect the exercise of moral rights. [↑](#footnote-ref-22)
22. Nothing in this Article affects a Party’s ability to establish: (i) which specific contracts underlying the creation of works, performances or phonograms shall, in the absence of a written agreement, result in a transfer of economic rights by operation of law; and (ii) reasonable limits to protect the interests of the original right holders, taking into account the legitimate interests of the transferees. [↑](#footnote-ref-23)
23. For the purposes of this Article, “RMI” means:

    (a) information that identifies the work, the performance, the phonogram, the author of the work, the performer of the performance, the producer of the phonogram, or the owner of any right in the work, performance, or phonogram;

    (b) information about the terms and conditions of use of the work, performance,or phonogram; or

    (c) any numbers or codes that represent the information described in subparagraphs (a) and (b) of this footnote,

    when any of these items of information is attached to a copy of a work, performances fixed in phonograms, or a phonogram, or appears in connection with the communication or the making available of a work, performances fixed in phonograms, or a phonogram to the public. [↑](#footnote-ref-24)
24. For greater certainty, “royalties” may include equitable remuneration. [↑](#footnote-ref-25)
25. For greater certainty, “encouraging” does not require a Party to intercede in any contractual arrangements between collective management organisations. [↑](#footnote-ref-26)
26. For the greater certainty, each Party confirms that the enforcement procedures set out in this Section shall be available to the same extent with respect to acts of infringement of copyright or related rights and trademarks, in the digital environment. [↑](#footnote-ref-27)
27. For greater certainty, it is understood that such measures may include, but are not limited to, legislation, guidelines, policies, awareness campaigns, etc. [↑](#footnote-ref-28)