

*This document contains the new EU proposal for a legal text on Intellectual Property Rights in the Trade Part of the EU-Mercosur Association Agreement. It has been tabled for discussion with Mercosur. The actual text in the final agreement will be a result of negotiations between the EU and Mercosur. The EU reserves the right to make subsequent modifications to this proposal.*

## **Chapter on Intellectual Property Rights**

### **Section 1 – General Provisions**

#### **Article 1**

##### *Objectives*

1. The objectives of this chapter are to:
  - a) facilitate the production and commercialization of innovative and creative products between the Parties; and
  - b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

#### **Article 2**

##### *Nature and Scope of Obligations*

1. The Parties shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties including the *Agreement on Trade-related Aspects of Intellectual Property* (hereinafter called TRIPS Agreement) contained in Annex IC to the WTO Agreement. The provisions of this chapter shall complement and further specify the rights and obligations between the Parties under this Agreement and those treaties.
2. For the purpose of this Agreement, intellectual property refers at least to all categories of intellectual property that are the subject of Articles of this Agreement.
3. Protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the *Paris Convention for the Protection of Industrial Property* (Stockholm Act 1967).
4. This Chapter does not preclude the Parties from applying provisions of domestic law introducing higher standards for the protection and enforcement of intellectual property, provided that they do not violate the provisions of this Chapter.

#### **Article 3**

##### *Exhaustion*

Each Party shall provide for a regime of national or regional exhaustion of intellectual property rights.<sup>1</sup>

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<sup>1</sup> In the area of copyright and related rights, this Article only applies to the distribution right.

## **Section 2- Standards Concerning Intellectual Property Rights**

### **Article 4 Copyright and related rights**

#### **Article 4.1** *International treaties*

1. The Parties shall comply with the rights and obligations set out in:
  - a) The Berne Convention for the Protection of Literary and Artistic Works ('the Berne Convention');
  - b) The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (hereinafter referred to as the "Rome Convention");
  - c) The WIPO (World Intellectual Property Organisation) Treaty on Copyright (hereinafter referred to as the "WCT");
  - d) The WIPO (World Intellectual Property Organisation) Treaty on Performances and Phonograms (hereinafter referred to as the "WPPT");
2. The Parties aim to comply with the provisions of the Beijing Treaty on audio-visual performances and the provisions of the Marrakesh Treaty to facilitate access for persons who are blind, visually impaired, or otherwise print disabled.

#### **Article 4.2** *Authors*

The Parties shall provide for authors the exclusive right to authorise or prohibit:

1. direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of their works;
2. any form of distribution to the public by sale or otherwise of the original of their works or of copies thereof;
3. 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 them from a place and at a time individually chosen by them.
4. the commercial rental to the public of originals or copies.

#### **Article 4.3** *Performers*

The Parties shall provide for performers the exclusive right to authorise or prohibit:

1. the fixation<sup>2</sup> of their performances;

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<sup>2</sup> Fixation means the embodiment of sounds or images, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

2. 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;
3. the distribution to the public, by sale or otherwise, of the fixations of their performances;
4. the making 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 of fixations of their performances;
5. the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation;
6. the commercial rental to the public of the fixation of their performances.

#### **Article 4.4**

##### *Producers of phonograms*

The Parties shall provide for phonogram producers the exclusive right to authorise or prohibit:

1. the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of their phonograms;
2. the distribution to the public, by sale or otherwise, of their phonograms, including copies thereof;
3. the making 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 of their phonograms;
4. the commercial rental of their phonograms to the public.

#### **Article 4.5**

##### *Broadcasting organisations*

The Parties shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

1. the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;
2. 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, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite;
3. the making available to the public, by wire or wireless means, 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;
4. the distribution to the public, by sale or otherwise, of fixations of their broadcasts; and
5. the rebroadcasting of their broadcasts by wireless means, as well as 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.

#### **Article 4.6**

##### *Right to remuneration for broadcasting and communication to the public*

1. The Parties 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, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public.
2. The Parties shall provide that the single equitable remuneration shall be claimed from the user by the performer or by the producer of a phonogram or by both. The Parties 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.

#### **Article 4.7**

##### *Term of protection*

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after his death, irrespective of the date when the work is lawfully made available to the public.
2. The term of protection of a musical composition with words shall expire 70 years after the death of the last of the following persons to survive, whether or not those persons are designated as co-authors: the author of the lyrics and the composer of the musical composition, provided that both contributions were specifically created for the respective musical composition with words.
3. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
4. In the case of anonymous or pseudonymous works, the term of protection shall run for 70 years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.
5. Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately.
6. The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.
7. The rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.
8. The rights of performers in a fixation of the performance otherwise than in a phonogram shall expire not less than fifty years after the date of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public

within this period, the rights shall expire not less than 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.

9. The rights of performers in a fixation of the performance in a phonogram and producers of phonograms shall expire 70 years after the first lawful publication or communication to the public from the date of the first such occurrence. The Parties may adopt effective measures in order to ensure that the profit generated during the 20 years of protection beyond 50 years are shared fairly between the performers and producers.

10. The rights of producers of the first fixation of a film shall expire 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. The term “film” shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

11. The terms laid down in this Article shall be calculated from the 1st January of the year following the event.

12. The terms of protection may exceed the periods provided for in this Article.

#### **Article 4.8**

##### *Resale right on original works of art*

1. The Parties shall provide, for the benefit of the author of an original work of art, a resale right, defined as an inalienable right which cannot be waived, even in advance, to receive a percentage of the price obtained from any resale of that work after the first transfer by the author.

2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, 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 1 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 minimum amount.

#### **Article 4.9**

##### *Cooperation on collective management of rights*

1. The Parties agree to promote the transparency of collective management organisations, in particular as regards the revenues they collect, deductions applied to such income, the use of the royalties collected, the distribution policy and their repertoire.

2. The Parties hereby undertake to ensure that where a collective management organisation established in the territory of a Party represents a collective management organisation established in the territory of another Party in a representation agreement, the organisation representative does not discriminate against entitled members of the organisation represented.

3. The representing collective management organisation must pay accurately, regularly and diligently the amounts owed to the collective management organisation and provide the represented organisation information on the amounts of revenue collected on its behalf and the deductions made.

#### **Article 4.10**

##### *Exceptions and limitations*

1. The Parties shall provide for limitations or exceptions to the exclusive rights only in certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the right holders.

2. The Parties shall provide that temporary acts of reproduction which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable

- (a) a transmission in a network between third parties by an intermediary, or
- (b) a lawful use

of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right.

#### **Article 4.11**

##### *Protection of Technological Measures*

1. The Parties shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned, carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.

2. The Parties shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, 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, or
- (b) have only a limited commercially significant purpose or use other than to circumvent, or
- (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitation the circumvention of, any effective technological measures.

3. For the purposes of this article, the expression 'technological measures' means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the right holder of any copyright or related right as provided for by national legislation. Technological measures shall be deemed 'effective' where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.

#### **Article 4.12**

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

1. The Parties shall provide adequate legal protection against any person knowingly performing without authority any of the following acts:

- (a) the removal or alteration of any electronic rights-management information;
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under this Agreement from which electronic rights-management information has been removed or altered without authorisation,

if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights.

2. For the purposes of this article, the expression "rights-management information" means any information provided by right holders which identifies the work or other subject-matter referred to in this Agreement, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.

The first subparagraph shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Article.

## **Article 5** *Trademarks*

### **Article 5.1** *International Agreements*

The Parties:

1. shall comply with the *Trademark Law Treaty* and with the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*,
2. shall accede to the *Protocol related to the Madrid Agreement concerning the International Registration of Marks* and
3. shall comply with and make all reasonable efforts to accede to the *Singapore Treaty on the Law of Trademarks*.

### **Article 5.2** *Registration Procedure*

1. The Parties shall establish a system for the registration of trademarks in which each final negative decision on, including the partial refusal of registration issued by the relevant trademark administration shall be notified in writing and duly reasoned and open to challenge.
2. The Parties shall provide for the possibility to oppose applications to register trademarks or, where appropriate, the registration of trade marks. Such opposition proceedings shall be adversarial.
3. The Parties shall provide a publicly available electronic database of applications and registrations of trademarks.

### **Article 5.3** *Rights conferred by a trademark*

1. The registered trade mark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his/her consent from using in the course of trade:
  - (a) any sign which is identical with the trade mark in relation to goods or services which are identical with those for which the trade mark is registered;

- (b) any sign where, because of its identity with, or similarity to, the trade mark and the identity or similarity of the goods or services covered by the trade mark and the sign, there exists, on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark.
2. The proprietor of a registered trade mark is entitled to prevent all third parties from bringing, in the course of trade, products into the territory of the Party where the trade mark is registered without being released for free circulation there, where such goods, including packaging, come from third countries and bear without authorisation a trade mark which is identical to the trade mark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trade mark<sup>3</sup>.
  3. The power conferred on the proprietor of the trade mark shall lapse if during the proceedings to determine whether there was a breach of the registered mark, the declarant or the holder of the products can prove that the proprietor of the registered trade mark is not entitled to prohibit the placing on the market of the product in the country of final destination.

#### **Article 5.4**

##### *Well-known Trademarks*

For the purpose of giving effect to protection of well-known trademarks, as referred to in Article 6*bis* of the Paris Convention (1967) and Article 16(2) and (3) of the TRIPS Agreement, the Parties shall apply the Joint Recommendation adopted by the assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (WIPO) at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO (September 1999).

#### **Article 5.5**

##### *Grounds for revocation*

1. The Parties shall provide that a trade-mark shall be liable to revocation if, within a continuous period of five years, the trade mark has not been put to genuine use in the relevant territory in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use. However, no person may claim that the proprietor's rights in a trade mark should be revoked where, during the interval between expiry of the five-year period and filing of the application for revocation, genuine use of the trade mark has been started or resumed. The commencement or resumption of use within a period of three months preceding the filing of the application for revocation, that period shall start to run at the earliest on expiry of the continuous period of five years of non-use, shall be disregarded where preparations for the commencement or resumption of use takes place only after the holder has been informed that the application for revocation may be filed.
2. Without prejudice to paragraph 1, a trade mark shall be liable to revocation if, after the date on which it was registered:
  - a) has become, in consequence of acts or inactivity of the proprietor, the common name in the trade for a product or service in respect of which it is registered;
  - b) in consequence of the use made of it by the proprietor or with his consent in respect of the goods or services for which it is registered, liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

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<sup>3</sup> The Parties may take additional appropriate measures with a view to ensure the smooth transit of generic medicines.



## **Article 5.6**

### *Invalidation of the registration application in bad faith*

A trade mark shall be liable to be declared invalid where the application for registration of the trade mark was made in bad faith by the applicant. The parties may also provide that such a trade mark shall not be registered.

## **Article 5.7**

### *Exceptions to the Rights Conferred by a Trademark*

1. The Parties shall provide for limited exceptions to the rights conferred by a trademark such as the fair use of descriptive terms, including in the case of geographical indications, and they may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

2. The trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:

(a) his own name or address;

(b) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services;

(c) the trademark where it is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts; provided he uses them in accordance with honest practices in industrial or commercial matters.

3. The trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, an earlier right which only applies in a particular locality if that right is recognised by the laws of the Party in question and within the limits of the territory in which it is recognised.

## **Article 6**

### *Designs*

### **Article 6.1**

#### *International Agreements*

The Parties shall implement the *Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs* (1999).

### **Article 6.2**

#### *Protection of Registered Designs*

1. The Parties shall provide for the protection of independently created designs that are new and are original<sup>4</sup>. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this article.

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<sup>4</sup> For the purpose of this Article, a Party may consider that a design having individual character is original.

2. The holder of a registered design shall have at least the right to use and prevent third parties not having the owner's consent at least from using and notably making, offering for sale, selling, putting on the market, importing, exporting, stocking such a product or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes, unduly prejudice the normal exploitation of the design, or are not compatible with fair trade practice.
3. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and original:
  - (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter, and
  - (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality.
4. "Normal use" within the meaning of paragraph 3(a) shall mean use by the end user, excluding maintenance, servicing or repair work.

### **Article 6.3**

#### *Term of Protection*

The duration of protection available shall amount to 25 years from the date of filing of the application.

### **Article 6.4**

#### *Protection Conferred to Unregistered Designs*

1. The European Union and Mercosur shall provide the legal means to prevent the use of unregistered designs, only if the contested use results from copying that design. Such use shall at least cover the offering for sale, putting on the market, importing and exporting the product concerned.
2. The term of protection for unregistered designs shall amount to at least three years as from the date on which the design was first made available to the public.

### **Article 6.5**

#### *Exceptions and exclusions*

1. The Parties may establish 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.
2. Design protection shall not extend to designs dictated essentially by technical or functional considerations. In particular a design right shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions for the product in which is incorporated or to which the design is applied to be mechanically connected to, or placed in or around, or in contact with another product so that either product may perform its function.
3. A design right shall not subsist in a design which is contrary to public policy or to accepted principles of morality.
4. By way of derogation from paragraph 2, a design subsists in a design serving under the conditions set out in Article 6. 2 (1), which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

## **Article 6.6**

### *Relationship to Copyright*

A design shall also be eligible for protection under the law of copyright of that Party as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.

## **Article 7**

### **Geographical indications**

#### **Article 7.1**

##### *Scope*

1. This Article applies to the recognition and protection of geographical indications (GIs) originating in the territory of the contracting parties.
2. The GIs of a Contracting Party to be protected by the other Contracting Party shall only be subject to this Article if covered by the scope of the legislation referred to in Article 7. 2.

#### **Article 7.2**

##### *Established geographical indications*

1. Having examined the legislation of the Mercosur countries as set out in Annex I to this Chapter, the European Union concludes that this legislation meets the elements laid down in Annex II.
2. Having examined the legislation of the European Union set out in Annex I, the Mercosur countries conclude that this legislation meets the elements laid down in Annex II.
3. Having completed an objection procedure and having examined the EU GIs listed in Annex III, which have been registered by the European Union under the legislation referred to in paragraph 2, the Mercosur countries undertake to protect these GIs according to the level of protection laid down in this Agreement.
4. Having completed an objection procedure and having examined the GIs of the Mercosur countries listed in Annex III, which have been recognised and protected by the Mercosur countries under the legislation referred to in paragraph 1, the European Union undertakes to protect these GIs according to the level of protection laid down in this Agreement.

#### **Article 7.3**

##### *Addition of new geographical indications*

1. The Contracting Parties agree on the possibility to add in Annex III new GIs to be protected pursuant to the procedure laid down in Article 7. 10, paragraph 3, after having completed the objection procedure and after having examined the GIs as referred to Article 7. 2, paragraphs 3 and 4, to the satisfaction of both Contracting Parties.
2. A Contracting Party shall not be required to protect as a GI a name that conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.

## **Article 7.4**

### *Scope of protection of geographical indications*

1. The GIs listed in Annexes III, as well as those added pursuant to Article 7. 3, shall be protected against:

(a) any direct or indirect commercial use of a protected name:

i) comparable products not complying with the product specification of the GI; or

ii) in so far as such use exploits the reputation of a GI;

b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as “style”, “type”, “method”, “as produced in”, “imitation”, “flavour”, “like” or similar;

c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the use for the packaging of a container liable to convey a false impression as to its origin;

d) any other practice liable to mislead the consumer as to the true origin of the product.

2. Protected GIs shall not become generic in the territories of o the Contracting Parties.

3. If GIs are wholly or partially homonymous, protection shall be granted to each indication provided there is sufficient distinction in practice between conditions of usage and presentation of the names, so as to not mislead the consumer.

4. Where a contracting party, in the context of negotiations with a third country, proposes to protect a GI from that third country, and the name is homonymous with a GI from the other Contracting Party, the latter shall be informed and be given the opportunity to comment before the name is protected.

5. Nothing in this Article shall oblige a Contracting Party to protect a GI from the other Contracting Party which is not or ceases to be protected in its country of origin. The Contracting Parties shall notify each other if a GI ceases to be protected in its country of origin. Such notification shall take place in accordance with the procedures laid down in Article 7. 11, paragraph 3.

## **Article 7.5**

### *Right of use of GIs*

1. A GI under this Agreement may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirit drinks conforming to the corresponding specification.

2. Once a GI is protected under this Agreement, the use of such protected name shall not be subject to any registration of users or further charges.

3. Indications, abbreviations and symbols referring to the GIs scheme defined under legislations listed in Annex I, may only be used in the labelling of products protected or registered in the respective territories and produced in conformity with the corresponding product specification.

### **Article 7.6**

#### *Relationship with trademarks*

1. Where a GI is protected under this Agreement, the Contracting Parties shall refuse the registration of a trademark for similar products the use of which would contravene Article 7.4 provided that an application for registration of the trademark was submitted after the date of application for protection of the GI on the territory concerned.

Trade marks registered in breach of the first subparagraph shall be invalidated.

2. For the GIs listed in Article 7.2 of this Agreement, the date of application for protection shall be the date of entry into force of this Agreement.

3. For the GIs referred to in Article 7.3 of this Agreement, the date of application for protection shall be the date of transmission of a request to another Contracting Party to protect a GI.

4. The Contracting Parties shall not be obliged to protect a GI pursuant to Article 7.3 where, in the light of a reputed or well-known trademark, protection is liable to mislead the consumer as to the true identity of the product.

5. Without prejudice to paragraph 4 of this Article, the Contracting Parties shall protect the GIs also where a prior trade mark exists. A prior trade mark shall mean a trade mark the use of which corresponds to one of the situations referred to in Article 7.4(1), which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in good faith within the territory of one of the Contracting Parties before the date on which the application for protection of the GI is submitted by the other Contracting Party under this Agreement.

Such trade mark may continue to be used and renewed notwithstanding the protection of GIs, provided that no grounds for the trademark's invalidity or revocation exist in the legislation on trade-marks of the Parties.

### **Article 7.7**

#### *Enforcement of protection*

The Contracting Parties shall enforce the protection provided for in Articles 7.4 to 7.6 by appropriate administrative action by public authorities or judicial steps. The Contracting Parties shall also enforce such protection at the request of an interested party.

### **Article 7.8**

#### *General rules*

1. Import, export and marketing of products corresponding to the names referred to in Article 7.2 shall be conducted in compliance with the laws and regulations applying in the territory of the Party in which the products are placed on the market.

2. Any matter arising from a product specification of GIs protected under this Agreement shall be dealt with in the Committee established in Article 7.10 of this Chapter.

3. The GIs protected under this Agreement may only be cancelled by the Contracting Party in which the product originates.

4. A product specification referred to in this Agreement shall be the one approved, including any amendments also approved, by the authorities of the Contracting Party in the territory of which the product originates.

### **Article 7.9**

#### *Cooperation and Transparency*

1. The Contracting Parties shall remain in contact, directly or through the Joint Committee established pursuant to Article 7.10 on all matters relating to the implementation and the functioning of this Agreement. In particular, a Contracting Party may request from another Contracting Party information relating to products specifications and their amendments, as well as contact points for control provisions.

2. Each Contracting Party may make publicly available the product specifications or a summary thereof and contact points for control provisions corresponding to the GIs of the other Party protected pursuant to this Agreement.

### **Article 7.10**

#### *Joint Committee*

1. The Contracting Parties shall set up a Joint Committee consisting of representatives of the European Union and the Mercosur countries, with the purpose of monitoring the development of this Agreement and of intensifying their cooperation and dialogue on GIs.

2. The Joint Committee adopts its decisions by consensus. It shall determine its own rules of procedure. It shall meet at the request of one of the Parties and at the latest within ninety days after the request, alternately in the European Union and in the Mercosur countries, at a time and a place and in a manner (which may include by videoconference) mutually determined by the contracting parties.

3. The Joint Committee shall ensure the proper functioning of this Agreement and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:

- a) amending Annex I of this Chapter, as regards the references to the law applicable in the Parties;
- b) amending Annexes III and IV of this Chapter regarding GIs;
- c) exchanging information on legislative and policy developments on GIs and any other matter of mutual interest in the area;
- (d) exchanging information on GIs for the purpose of considering their protection in accordance with this Agreement.

*ANNEX I*

**Legislation of the parties**

**1. ARGENTINA**

— [...].

**2. BRAZIL**

**3. PARAGUAY**

**4. URUGUAY**

**5. VENEZUELA**

**6. EU**

Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012, with its implementing rules, on quality schemes for agricultural products and foodstuffs.

Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 on the common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007

Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 and its implementing acts.

Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91.

*ANNEX II*

**Elements for registration and control of geographical indications referred to in Article 7.2, sections 1 and 2)**

1. A register listing geographical indications protected in the territory;
2. An administrative process verifying that geographical indications identify a good as originating in a territory, region or locality of one or more States, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
3. A requirement that a registered name shall correspond to a specific product or products for which a product specification is laid down, which can only be amended by due administrative process;
4. Control provisions applying to production;
5. A right for any producer established in the area who submits to the system of controls to produce the product labelled with the protected name provided he complies with the product specification;
6. An objection procedure that allows to take into account the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property.
7. A rule that protected names may not become generic;
8. Provisions concerning the registration, which may include refusal of registration, of terms homonymous or partly homonymous with registered terms, terms customary in common language as the common name for goods, terms comprising or including the names of plant varieties and animal breeds. Such provisions shall take into account the legitimate interests of all parties concerned.



*ANNEX III*

**Geographical indications of products as referred to in Article 7. 2, paragraphs 1 to 5**

**Agricultural products, processed agricultural products, fish and fishery products other than wines, spirits and aromatised wines of the European Union to be protected in the Mercosur countries:**

Member State of the European Union Name to be protected | | product type

**Agricultural products, processed agricultural products, fish and fishery products other than wines, spirits and aromatised wines of the Mercosur countries to be protected in the European Union.**

[...]

*ANNEX III...*

**Geographical indications of products as referred to in Article 7.2, paragraphs 1 to 5.**

**Wines, spirits and aromatised wines of the European Union to be protected in the Mercosur countries:**

Member State of the European Union Name to be protected | | product type

**Wines, spirits and aromatised wines of the Mercosur countries to be protected in the European Union**

[...]

**Article 8**  
**Patents**

**Article 8.1**  
*International treaties and general provisions*

The Parties shall comply with the *Patent Law Treaty* and *Patent Cooperation Treaty*.

[placeholder : Patent general provisions]

**Article 8.2**  
*Patents and public health*

1. The Parties recognise the importance of the declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 (hereinafter referred to as the “Doha Declaration”) by the Ministerial Conference of the WTO. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with the Doha Declaration.

2. The Parties shall contribute to the implementation and respect the decision of the WTO General Council of 30 August 2003 on implementation of paragraph 6 of the Doha Declaration, as well as the Protocol amending the TRIPS Agreement of 6 December 2005.

**Article 8.3**  
*Extension of the period of protection conferred by a patent on medicinal products*<sup>5</sup>

1. The Parties recognise that medicinal products protected by a patent on their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.

2. The Parties shall provide for a further period of protection for a medicinal product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in the second sentence of paragraph 1, reduced by a period of 5 years.

3. Notwithstanding paragraph 2, the duration of the further period of protection may not exceed [...] years.

4. In the case of medicinal products for which paediatric studies have been carried out, and the results of those studies are reflected in the product information, the Parties shall

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<sup>5</sup> Any substance or combination of substances presented as having properties for treating or preventing disease in human beings or animals and any substance or combination of substances which may be administered to human beings or animals with a view to making a medical diagnosis or to restoring, correcting or modifying physiological functions in humans or animals

provide for a further [...] months extension of the period of protection referred to in paragraph 2.

### **Article 8.5**

#### *Extension of the period of protection conferred by a patent on plant protection products<sup>6</sup>*

1. The Parties recognise that plant protection products protected by a patent in their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.
2. The Parties shall provide for a further period of protection for a plant protection product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in the second sentence of paragraph 1, reduced by 5 years.
3. Notwithstanding paragraph 2, the duration of the further period of protection may not exceed [...] years.

### **Article 9**

#### *Plant Varieties*

The Parties shall protect plant varieties rights, in accordance with the International Convention for the Protection of New Varieties of Plants (UPOV) as lastly revised in Geneva on March 19, 1991, (the so-called "1991 UPOV ACT") including the exceptions to the breeder's right as referred to in Article 15 of the said Convention, and co-operate to promote and enforce these rights.

### **Article 10**

#### **Protection of undisclosed information**

#### **Article 10.1**

##### *Trade Secrets*

(placeholder: Commission may propose text on the protection of undisclosed know-how and business information.)

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<sup>6</sup> Means plant protection products as active substances and preparations which are intended to: A) protect plants or plant products against all harmful organisms or prevent the action: (b) influencing the life processes of plants, other than as a nutrient (e.g. plant growth regulators); (c) preserving plant products, insofar as such substances or products are not subject to special provisions on preservatives agents; (d) destroy undesirable plants; or (e) destroy parts of plants, check or prevent undesirable growth of plants.

### **Article 10.2**

#### *Protection of data submitted to obtain an authorisation to put a medicinal product on the market*

1. The Parties shall protect commercially confidential information submitted to obtain an authorisation to place pharmaceutical products on the market against disclosure to third parties unless overriding public health interests provide otherwise. Any confidential business information will also benefit from protection against unfair commercial practices.
2. When a Party requires the submission of results of pre-clinical tests or of clinical trials (the origination of which involves a considerable effort) concerning the safety and efficacy of a pharmaceutical product prior to granting approval for the marketing of such product, , the Party shall not, for a period of [...] years from the date of approval in that Party, permit any other applicant to market the same or a similar product, on the basis of the marketing approval granted to the party which had provided the results of pre-clinical tests or of clinical trials, unless the party which had provided this information has given its consent or unless international agreements recognised by both Parties provide otherwise.
3. During a [...] year period, starting from the date of grant of marketing approval in the Party concerned, a marketing authorisation granted for any subsequent application will not permit placing a pharmaceutical product on the market, unless the subsequent applicant submitted his/her own data (or data used with authorization of the right holder) meeting the same requirements as the first applicant. Products registered without submission of such data would be removed from the market until the requirements were met.
4. In addition, the [...] year period referred to in paragraph 3 shall be extended to a maximum of [...] years if, during the first [...] years after obtaining the authorisation, the holder of the basic authorisation obtains an authorisation for one or more new therapeutic indications which are considered of significant clinical benefit in comparison with existing therapies.

### **Article 10.3**

#### *Protection of data submitted to obtain marketing authorisation for plant protection products*

1. The Parties shall recognise a temporary right to the owner of a test or study report submitted for the first time to achieve a marketing authorisation for a plant protection product. During such period, the test or study report will not be used for the benefit of any other person aiming to achieve a marketing authorisation for plant protection product, except when the explicit consent of the first owner is proved. This right will be hereinafter referred as data protection.
- 2.. The test or study report should fulfil the following conditions:
  - (a) be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops, and
  - (b) be certified as compliant with the principles of good laboratory practice or of good experimental practice.

3. The period of data protection shall be at least [...] years from the first authorisation granted by the concerned authority in that Party. In case of low risk plant protection products the period can be extended to [...] years.

4. Those periods shall be extended by [...] months for each extension of authorisation for minor uses<sup>7</sup> if the applications for such authorisations are made by the authorisation holder at the latest [...] years after the date of the first authorisation. The total period of data protection may in no case exceed [...] years. For low risk plant protection products the total period of data protection may in no case exceed [...] years.

5. A test or study shall also be protected if it was necessary for the renewal or review of an authorisation. In those cases, the period for data protection shall be [...] months.

### **Section 3** **Enforcement of intellectual property rights**

#### Sub-Section 3.1 **General Provisions**

#### **Article 11** *General obligations*

1. The Parties reaffirm their commitments under the TRIPS Agreement and in particular of its Part III, and shall provide for the following complementary measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.<sup>8</sup> These measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

2. These measures and remedies shall also be effective, proportionate and dissuasive and 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.

#### **Article 12** *Persons entitled to apply for the application of the measures, procedures and remedies*

The Parties shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this section and in Part III of the TRIPS Agreement:

- a) the holders of intellectual property rights in accordance with the provisions of the applicable law,
- b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law,

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<sup>7</sup> Minor use: use of a plant protection product in a particular Party on plants or plant products which are not widely grown in that particular Party or widely grown to meet an exceptional plant protection need.

<sup>8</sup> For the purposes of this sub-section the notion of "intellectual property rights" should include at least the following rights: copyright; rights related to copyright; *sui generis* right of a database maker; rights of the creator of the topographies of a semi-conductor product; trade mark rights; design rights; patent rights, including rights derived from supplementary protection certificates; geographical indications; utility model rights; plant variety rights; trade names in so far as these are protected by each Party.

- c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law,
- d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

Sub-Section 3.2

**Civil & Administrative Enforcement**

**Article 13**

*Evidence*

1. The Parties shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a Party which has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.
2. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto.
3. The Parties shall take the measures necessary, in cases of infringement of an intellectual property right committed on a commercial scale, to enable the competent judicial authorities to order, where appropriate, on application by a Party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

**Article 14**

*Right of information*

1. The Parties shall ensure that, in the context of 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 the infringer and/or any other person which is party to a litigation or witness therein to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right
  - a) 'Any other person' in this paragraph means a person who:
    - (i) was found in possession of the infringing goods on a commercial scale;
    - (ii) was found to be using the infringing services on a commercial scale;
    - (iii) was found to be providing on a commercial scale services used in infringing activities;
    - (iv) was indicated by the person referred to in subparagraphs (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services.

- b) Information shall, as appropriate, comprise:
  - (i) 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
  - (ii) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.
- 2. This Article shall apply without prejudice to other statutory provisions 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 of information;
  - d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to his/her own participation or that of his close relatives in an infringement of an intellectual property right;
  - e) govern the protection of confidentiality of information sources or the processing of personal data.

## **Article 15**

### *Provisional and Precautionary Measures*

1. The Parties shall ensure that the judicial authorities may, at the request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by domestic law, the continuation of the alleged infringements of that right, or 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 by a third party to infringe an intellectual property right. For the purposes of this Article, "Intermediaries" include internet service providers.
2. An interlocutory injunction may also be issued to 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.
3. In the case of an alleged infringement committed on a commercial scale, the Parties shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.



**Article 16**  
*Remedies*

1. The Parties shall ensure that the judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction or at least the definitive removal from the channels of commerce, of goods that they have found to infringe an intellectual property right. If appropriate, the judicial authorities may also order destruction of materials and implements principally used in the creation or manufacture of those goods.
2. The Parties' judicial authorities shall order that those measures be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

**Article 17**  
*Injunctions*

The Parties shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer as well as against an intermediary whose services are being used by a third party to infringe an intellectual property rights an injunction aimed at prohibiting the continuation of the infringement.

**Article 18**  
*Alternative measures*

The Parties may provide that the judicial authorities, in appropriate cases and at the request of the person liable to be subject to the measures referred to in Article 16 (remedies) and/or Article 17 (Injunctions), may order the pecuniary compensation to be paid to the injured party instead of applying the measures provided for in these two Articles if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

**Article 19**  
*Damages*

1. The Parties shall ensure that the judicial authorities, on application of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the right-holder damages appropriate to the actual prejudice suffered by him/her as a result of the infringement. When the judicial authorities set the damages:
  - a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement ; or

b) as an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the Parties may lay down that the judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages which may be pre-established.

**Article 20**  
*Legal Costs*

The Parties shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall as a general rule be borne by the unsuccessful party, unless equity does not allow this.

**Article 21**  
*Publication of Judicial Decisions*

The Parties shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

**Article 22**  
*Presumption of authorship or ownership*

The Parties shall recognise that for the purposes of applying the measures, procedures and remedies provided for in this Agreement:

- a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner;
- b) the provision under (a) shall apply *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

**Article 23**  
*Administrative procedures*

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in the relevant provisions of this section.

## **Article 24**

### *Consistency with GATT and TRIPS Agreement*

In implementing border measures for the enforcement of intellectual property rights by customs, whether or not covered by this article, the Parties shall ensure consistency with their obligations under the GATT and TRIPS agreements and, in particular, with Article V of GATT agreement, Article 41 and Section 4 of the Part III of TRIPS agreement.

## **Article 25**

### *Border measures*

#### 1. Definitions

For the purpose of this Article, 'intellectual property rights' are understood as those that are protected by the legislation of the Parties as intellectual property rights:

- a) a trade mark;
- b) a design;
- c) a copyright or related right;
- d) a geographical indication;
- e) a patent, including a supplementary protection certificate;
- f) a right to the protection of plant varieties;
- g) a topography of semiconductor product;
- h) a utility model;
- i) a trade name.

(placeholder: Commission will propose text on border measures.)

## **Article 26**

### *Cooperation*

1. The Parties agree to cooperate with a view to supporting implementation of the commitments and obligations undertaken under the IPR Chapter.
2. Subject to Title XX (Economic and Sector Cooperation) and in accordance with the provisions of Title XX (Financial Cooperation, with Anti-Fraud Provisions) of this Agreement, areas of cooperation include the following activities, but are not limited to:
  - a) The exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;
  - b) The exchange of experience between the EU and the Mercosur countries on legislative progress;
  - c) The exchange of experience between the EU and the Mercosur countries on the

- enforcement of intellectual property rights;
- d) Exchange of experiences between the EU and the Mercosur countries on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies;
  - e) Coordination to prevent exports of counterfeit goods, including with other countries;
  - f) Technical assistance, capacity-building; exchange and training of personnel;
  - g) The protection and defence of intellectual property rights and the dissemination of information in this regard, inter alia, business circles and civil society;
  - h) Public awareness of consumers and right holders; enhancement of institutional cooperation, particularly between the intellectual property offices;
  - i) Actively promoting awareness and education of the general public on policies concerning intellectual property rights;
  - j) Formulation of effective strategies to identify key audiences and communication programmes to increase consumer and media awareness on the impact of intellectual property violations, including the risk to health and safety and the connection to organised crime.

3. Without prejudice to paragraphs 1 and 2 and to supplement them if necessary, the Parties agree to establish an intellectual property rights subcommittee to follow up on the implementation of the provisions of this Title and any other relevant issue. This subcommittee shall be co-chaired by officials of both Parties and will meet at least once per year, except if the Parties agree otherwise. These meetings shall be carried out through any agreed means, including by video conference. The sub-committee on Intellectual Property will adopt its decisions by consensus. It may also adopt specific rules of procedure, by consensus.

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*The following articles relating to enforcement of infringements in a digital environment should be placed in a chapter dealing with e-commerce, but will be discussed by the IPR teams.*

### **Liability of intermediary service providers**

#### **Article XX. 1**

##### *Use of intermediaries' services*

The Parties recognise that the services of intermediaries may be used for activities infringing an intellectual property right, and shall provide for the following measures in respect of intermediary service providers.

#### **Article XX. 2**

##### *Liability of intermediary service providers: mere conduit*

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the Parties shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:

- a) does not initiate the transmission;
- b) does not select the receiver of the transmission; and
- c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

3. This Article shall not affect the possibility for a competent authority, in accordance with the Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.

### **Article XX. 3**

#### *Liability of intermediary service providers: caching*

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:

- a) the provider does not modify the information;
- b) the provider complies with conditions on access to the information;
- c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
- d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
- e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority, in accordance with the Parties' legal systems, has ordered such removal or disablement.

2. This Article shall not affect the possibility for a competent authority, in accordance with the Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.

**Article XX. 4**

*Liability of intermediary service providers: hosting*

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:
  - a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
  - b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information;
2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.
3. This Article shall not affect the possibility for a competent authority, in accordance with the Parties' legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for the Parties of establishing procedures governing the removal or disabling of access to information.

**Article XX. 5**

*No general obligation to monitor*

1. The Parties shall not impose a general obligation on providers, when providing the services covered by Articles XX. 2 and XX. 3 and XX. 4, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.
2. The Parties may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.