

ANNEX 26
to the Treaty on the
Eurasian Economic Union

PROTOCOL
on Protection and Enforcement of Intellectual Property Rights

I. General Provisions

1. Present Protocol is developed in accordance with Section XXIII of the Treaty on Eurasian Economic Union in order to regulate relations in the sphere of protection and enforcement of intellectual property rights.

2. Intellectual property objects shall be understood as works of science, literature and art, computer programs, phonograms, performances, trademarks and service marks, geographical indications, appellations of origin of goods, inventions, utility models, industrial designs, selective achievements, layout design of integrated circuits, know-how and other objects of intellectual property protected by international treaties and acts of the EAEU and legislation of the member States.

II. Copyright and Related Rights

3. Copyright shall be extended to the works of science, literature, and art. The author of a work shall enjoy particularly the following rights:

- 1) exclusive right to a work;
- 2) right of authorship;
- 3) author's right to a name;
- 4) right to integrity of a work;
- 5) right to publish a work;
- 6) other rights established under the legislation of the member States.

4. Member States shall ensure that the terms of protection for the exclusive right to a work of author, the exclusive right to a work of joint authorship, and the exclusive right to a posthumous work shall be no less than the terms of protection under the Berne Convention for the Protection of Literary and Artistic Works of 1971 and the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization. Legislation of the member States may provide for longer terms of protection for the indicated rights.

Computer programs shall be protected as literature works according to the Berne Convention for the Protection of Literary and Artistic Works of 1971.

Compound works (encyclopedia, collection and other works) that result from creative activity shall be protected without prejudice to the rights of authors of every work that represents the part of the compound work. Author of the compound work shall enjoy the right to select and organize the materials of the work. Compound works shall be protected irrespective of copyright for every works of the compound work.

Derivative works (translations, adaptations, musical arrangements and other remaking of works of science, literature, and art) shall be equally protected as copyright works without prejudice to the rights of author of the original work. Author of derivative work shall enjoy copyright for translation and other adaptation of the work.

5. Member States shall grant right holders of copyright in cinematographic works the right to permit or prohibit public commercial distribution of originals or copies of their copyrighted works at the territory of other member States.

6. Property and personal non-property rights to the results of performing activity (performances), phonograms and other rights established under the legislation of the member States shall be rights related to copyright (related rights).

Performer shall be a natural person whose creative work resulted in creation of a performance, - a performing artist (actor, singer, musician, dancer or another person who acts, delivers, recites, sings, plays a musical instrument or otherwise participates in performing a work of literature, art, or folk art including variety, circus, or puppet show acts), a stage producer of a show (a person staging a theater, circus, puppet, variety or another theatrical production), and a conductor.

Member States shall grant the following rights to performers of the member States on a mutual basis:

exclusive right to performance;

right to a name – right to indicate the name or pseudonym on copies of the phonogram and in other cases of use of the performance; right to indicate the name of a group of performers except for cases when the nature of work does not allow indication of the name of a performer or a group;

other rights under the legislation of the member States.

7. Performers shall exercise their rights observing rights of the authors. Rights of a performer shall be recognized and valid independently of the existence and validity of copyright to the performance.

8. Producer of a phonogram shall be a person having taken the initiative and responsibility for the first recording of sounds of a performance, or other sounds, or representation of such sounds. Unless proved otherwise, a person whose name is indicated in a usual manner on a copy of phonogram and (or) its container shall be recognized as the producer of a phonogram.

Member States shall grant the following rights to the producers of phonograms:

1) exclusive right to a phonogram;

2) other rights established under the legislation of the member States.

9. Member States shall provide that term of protection for the rights of producers of phonograms shall be no less than those provided by the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization and the International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations (the 1961 Rome Convention). Legislation of the member States may provide for longer terms of protection for the indicated rights.

10. Collective management organization shall be organization acting within the powers granted to it by authors, performers, producers of phonograms, and other owners of copyright and related rights unless otherwise is provided under the legislation of the Member –states and powers granted to it by other collective management organizations in order to ensure payment of royalties to authors and other owners of copyright.

Relations occurring in connection with activity of collective management organizations shall be regulated by the international treaty concluded within the EAEU.

III. Trademarks and service marks.

11. Trademark or service mark (hereinafter, the trademark) shall be a sign protected by national legislation and international agreements of the member States used to distinguish goods and (or) services of particular participants of the civil turnover from goods and (or) services of other participants.

Words, images, three-dimensional and other signs or their combinations may be registered as trademarks. Trademark may be registered in any color or their combination.

12. Right holder of a trademark shall have an exclusive right to use a trademark in accordance with the legislation of member State, dispose this exclusive right and prohibit use of a trademark by other persons.

13. Initial term of trademark registration shall be 10 years. This term may be renewed unlimitedly at the request of the trademark owner filed within the last year of the registration validity, each time for a period not exceeding 10 years.

IV. Trademarks of the Eurasian Economic Union and Service Marks of the Eurasian Economic Union

14. Member States shall register trademarks of the Eurasian Economic Union and service marks of the Eurasian Economic Union (hereafter – trademark of the EAEU).

Trademark of the EAEU shall be registered only if it has a graphical representation.

Right holder of a trademark of the EAEU shall have an exclusive right to use a trademark of the EAEU according to the legislation of member States, dispose this exclusive right and prohibit other persons to use a trademark of the EAEU or similar designations.

15. Relations occurring in connection with registration, legal protection and use of trademark of the EAEU at the territories of member States shall be regulated by international treaty concluded within the EAEU.

V. Exhaustion of trademark and trademark of the EAEU

16. Member States shall apply the exhaustion principle of trademark, trademark of the EAEU according to which use of a trademark, trademark of the EAEU in relation to goods that have been lawfully introduced into the civil turnover on the territory of any of the member States directly by the trademark owner and (or) owner of the trademark of the EAEU or by other persons with his/her consent shall not constitute a violation of the exclusive right to such trademark, trademark of the EAEU.

V. Geographical Indications

17. Geographical indication shall be understood as indication, which identify a good as originating in the territory of a member State, region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

18. Geographical indication shall be protected at the territory of a member State if such protection is provided under legislation or international treaties of that member State.

VI. Appellation of Origin of Goods

19. Appellation of origin of goods shall mean a denomination that constitutes or contains contemporary or historical, official or unofficial, full or abbreviated name of a country, urban or rural settlement, locality or other geographic object, as well as a sign which is a derivative of such appellation, which became known through its use in relation to the goods, the special characteristics of which are exclusively or mainly determined by the natural conditions and (or) human factors of the geographical object concerned.

Indicated provisions shall apply to a sign which allows to identify a good as originating on the territory of a particular geographical object, and although it does not contain the name of the object, which became known as a result of using this sign in respect of the goods, the special characteristics of which meet the requirements provided in the paragraph above.

20. Designation, although representing or containing the name of a geographical object, which became a commonplace name of a certain kind of good without association with the place of its manufacture shall not be recognized as appellation of origin of goods.

Protection provided for appellation of origin of goods may be challenged and acknowledged as void in accordance with provisions of legislation of member States.

21. In respect of appellation of origin of goods, member States shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention for the Protection of Industrial Property of 20 March 1883 .

VIII. Appellation of Origin of Goods of the Eurasian Economic Union

22. Member States shall register appellation of origin of goods of the Eurasian Economic Union (hereafter - appellation of origin of goods of the EAEU). Appellation of origin of goods of the EAEU shall be protected simultaneously at the territory of all Member States.

23. Relations occurring in connection with registration, legal protection and use of appellation of origin of goods of the EAEU at the territories of member States shall be regulated by international treaty concluded within the EAEU.

IX. Patent Rights

24. The right to invention, utility model, and industrial design shall be protected according to the legislation of the member States and shall be certified by a patent confirming the priority, authorship, and exclusive right of a patent holder to such invention, utility model, or industrial design.

25. The author of an invention, utility model, or industrial design shall exercise the following rights:

- 1) exclusive right to invention, utility model, and industrial design;
- 2) right of authorship.

26. In particular cases provided by legislation of the member States, the author of an invention, utility model, or industrial design shall exercise also other rights including the right to obtain a patent, the right to remuneration for use of service invention, utility model, or industrial design.

27. The term of the exceptional right to an invention, utility model, or industrial design shall extend for:

- at least 20 years for inventions;
- at least 5 years for utility models;
- at least 5 years for industrial designs.

28. A patent for an invention, utility model, or industrial design shall grant the patent holder an exclusive right to use the invention, utility model, or industrial design by any method complying with the law of the member States and prohibit their use by other persons.

29. Member States shall have the right to provide for limitations of rights granted by the patent on condition that such exceptions are without any prejudice to common use of inventions, utility models, or industrial designs or legal interests of patent holder with account of legal interests of third parties.

IX. Selection achievements

30. Protection of selection achievements shall be established in accordance with legislation of member States.

31. Author of selection achievements shall have the following rights:

- 1) exclusive right for selection achievement;
- 2) right of authorship.

32. In cases provided by legislation of member States, author of selective achievement shall have also other rights, including the right to receive a patent, right to the name of selective achievement, right for remuneration for use of service selective achievement.

33. Term of exclusive right for selective achievement shall be no less than 25 years.

X. Topologies of Integrated Circuits

34. Topology of integrated circuits shall mean special-geometrical positioning of integrated circuit elements fixed on material object and connections between them.

35. Rights on topologies of integrated circuits shall be protected in accordance with legislation of member States.

36. Author of topology of integrated circuits shall have the following rights:

- 1) exclusive right on topology of integrated circuits;
- 2) right of authorship.

37. In cases provided by legislation of member States, author of topology of integrated circuits shall have also other rights, including the right for remuneration for use of service topology of integrated circuits.

38. Term of exclusive right for topology of integrated circuits shall be 10 years.

XI. Trade Secrets (know-how)

39. Trade secret (know-how) shall be understood as data of any character (industrial, technical, economic, organizational, etc.), including results of intellectual activity in scientific-research sphere, as well as data on methods of professional activity

that have valid or potential commercial value because it is secret for third persons, have no free access on legal grounds and possess the regime of commercial secret introduced by the holder of such data.

40. Legal protection of trade secrets (know-how) shall be provided according to the legislation of member States.

XII. Enforcement of Intellectual property Rights

41. Coordination of activity of member States on enforcement of intellectual property rights within the EAEU shall be in accordance with international treaty concluded within the EAEU.