

ARTICLE 4: INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall, at a minimum, give effect to this Article, including the following provisions:

(a) Articles 1 through 6 of the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* (1999), 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”);

(b) Articles 1 through 22 of the *International Convention for the Protection of New Varieties of Plants* (1991) (“UPOV Convention”);

(c) Articles 1 through 14 of the *WIPO Copyright Treaty* (1996) (“WCT”)⁴; and

(d) Articles 1 through 23 of the *WIPO Performances and Phonograms Treaty* (1996) (“WPPT”).⁵

2. Each Party shall make best efforts to ratify or accede to the *Patent Cooperation Treaty* (1984) and the Protocol Relating to the *Madrid Agreement Concerning the International Registration of Marks* (1989).

3. Each Party shall accord to nationals of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection⁶ and enjoyment of all intellectual property rights and any benefits derived therefrom, subject to the exceptions provided in this Article.

4. A Party may derogate from paragraph 3 in relation to its judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of the other Party, only where such derogations are necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner that would constitute a disguised restriction on trade.

5. The obligations under paragraphs 3 and 4 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.

⁴ Articles 1(4) and 6(2) of the WCT shall be excepted from this Agreement. Such exception shall be without prejudice to each Party’s respective rights and obligations under the WCT, the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (“*Berne Convention*”) and the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (“TRIPS”).

⁵ Articles 5, 8(2), 12(2), and 15 of the WPPT shall be excepted from this Agreement. Such exception shall be without prejudice to each Party’s respective rights and obligations under the WPPT, the *Berne Convention* and TRIPS.

⁶ For purposes of paragraphs 3 and 4, “protection” shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as uses of intellectual property rights specifically covered by this Agreement.

Trademarks and Geographical Indications

6. Trademarks shall include service marks, collective marks and certification marks,⁷ and may include geographical indications.⁸

7. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services which are related to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion.

8. Article 6bis of the *Paris Convention for the Protection of Industrial Property* (1967) ("*Paris Convention*") shall apply, *mutatis mutandis*, to goods or services which are not similar to those identified by a well-known trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark and provided that the interests of the owner of the trademark are likely to be damaged by such use.

9. Neither Party shall require recordal of trademark licenses to establish the validity of the license or to assert any rights in a trademark.

Copyright and Related Rights

10. Each Party shall provide that all reproductions, whether temporary or permanent, shall be deemed reproductions and subject to the reproduction right as envisaged in the provisions embodied in *WCT* Article 1(4) and the *Agreed Statement* thereto, and *WPPT* Articles 7 and 11 and the *Agreed Statement* thereto.

11. Each Party shall provide to authors and their successors in interest, to performers and to producers of phonograms the exclusive right to authorize or prohibit the importation into each Party's territory of copies of works and phonograms, even where such copies were made with the authorization of the author, performer or producer of the phonogram or a successor in interest.

12. Each Party shall provide to performers and producers of phonograms the exclusive right to authorize or prohibit the broadcasting and communication to the public of their performances or phonograms, regardless of whether the broadcast or communication is effected by wired or wireless means, except that a Party may provide exemptions for analog transmissions and free over-the-air broadcasts, and may introduce statutory licenses for non-interactive services that, by virtue of their programming practices, including both the content of their transmissions and their use of technological measures to prevent unauthorized uses, are unlikely to conflict with a normal exploitation of phonograms or performances.

⁷ Neither Party is obligated to treat certification marks as a separate category in national law, provided that such marks are protected.

⁸ A geographical indication shall be considered a trademark to the extent that the geographical indication consists of any sign, or any combination of signs, capable of identifying a good or service as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good or service is essentially attributable to its geographical origin.

13. In applying the prohibition under Article 11 of the *WCT* and Article 18 of the *WPPT* on circumvention of effective technological measures that are used by authors, performers and producers of phonograms in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances and phonograms, each Party shall prohibit civilly and criminally the manufacture, importation or circulation of any technology, device, service or part thereof, that is designed, produced, performed or marketed for engaging in such prohibited conduct, or that has only a limited commercially significant purpose or use other than enabling or facilitating such conduct.⁹

14. Each Party shall provide that any natural person or legal entity acquiring or holding any economic rights by contract or otherwise, including contracts of employment involving protected subject matter, may freely and separately transfer such rights by contract and shall be able to exercise those rights in its own name and enjoy fully benefits of such rights.

15. Each Party shall issue appropriate laws, regulations, or other measures (“measures”) providing that all government agencies use only computer software authorized for intended use. Such measures shall actively regulate the acquisition and management of software for government use.

16. 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 and do not unreasonably prejudice the legitimate interests of the right holders.

Patents

17. Subject to paragraph 18, patents shall be available for any invention, whether product or process, in all fields of technology, provided that it is new, involves an inventive step and is capable of industrial application.

18. Each Party may exclude from patentability:

(a) inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment provided that such exclusion is not made merely because the exploitation is prohibited by their law;

(b) diagnostic, therapeutic and surgical methods for the treatment of humans or animals.

19. If a Party permits the use by a third party of a subsisting patent to support an application for marketing approval of a product, the Party shall provide that any product produced under this authority shall not be made, used or sold in the territory of the Party other than for purposes related to meeting requirements for marketing approval, and if export is permitted, the product shall only be exported outside the territory of the Party for purposes of meeting requirements for marketing approval in the Party or in another country that permits the use by a third party of a subsisting patent to support an application for marketing approval of a product.

⁹ This provision does not require either Party to mandate that any consumer electronics, telecommunications or computing product not otherwise violating the prohibition be designed to affirmatively respond to any effective technological measure. Any violation of the prohibition shall be independent of any infringement of copyright or related rights.

20. Neither Party shall permit the use of the subject matter of a patent without the authorization of the right holder except in the following circumstances:

- (a) to remedy a practice determined after judicial or administrative process to be anti-competitive;
- (b) in cases of public non-commercial use or in the case of a national emergency or other circumstances of extreme urgency, provided that such use is limited to use by government entities or legal entities acting under the authority of a government; or
- (c) on the ground of failure to meet working requirements, provided that importation shall constitute working.

Where the law of a Party allows for such use pursuant to sub-paragraphs (a), (b) or (c), the Party shall respect the provisions of Article 31 of *TRIPS* and Article 5A(4) of the *Paris Convention*.

21. With regard to filing a patent application, when it is not possible to provide a sufficient written description of the invention to enable others skilled in the art to carry out the invention, each Party shall require a deposit with an “international depository authority,” as defined in the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1980).

Measures Related to Certain Regulated Products

22. Pursuant to Article 39.3 of *TRIPS*, each Party, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products that utilize new chemical entities,¹⁰ the submission of undisclosed test or other data, or evidence of approval in another country,¹¹ the origination of which involves a considerable effort, shall protect such information against unfair commercial use. In addition, each Party shall protect such information against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the information is protected against unfair commercial use.

23. With respect to pharmaceutical products that are subject to a patent:

- (a) each Party shall make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the patent term as a result of the marketing approval process.
- (b) the patent owner shall be notified of the identity of any third party requesting marketing approval effective during the term of the patent.

Enforcement of Intellectual Property Rights

¹⁰ It is understood that protection for “new chemical entities” shall also include protection for new uses for old chemical entities for a period of three years.

¹¹ It is understood that, in situations where there is reliance on evidence of approval in another country, Jordan shall at a minimum protect such information against unfair commercial use for the same period of time the other country is protecting such information against unfair commercial use.

24. Each Party shall provide that, at least in cases of knowing infringement of trademark, copyright and related rights, its judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement and any profits of the infringer that are attributable to the infringement that are not taken into account in computing such damages. Injury to the right holder shall be based upon the value of the infringed-upon item, according to the suggested retail price of the legitimate product, or other equivalent measures established by the right holder for valuing authorized goods.

25. Each Party shall ensure that its statutory maximum fines are sufficiently high to deter future acts of infringement with a policy of removing the monetary incentive to the infringer, and shall provide its judicial and other competent authorities the authority to order the seizure of all suspected pirated copyright and counterfeit trademark goods and related implements the predominant use of which has been in the commission of the offense, and documentary evidence.

26. Each Party shall provide, at least in cases of copyright piracy or trademark counterfeiting, that its authorities may initiate criminal actions and border measure actions *ex officio*, without the need for a formal complaint by a private party or right holder.

27. In civil cases involving copyright or related rights, each Party shall provide that the natural person or legal entity whose name is indicated as the author, producer, performer or publisher of the work, performance or phonogram in the usual manner shall, in the absence of proof to the contrary, be presumed to be the designated right holder in such work, performance or phonogram. It shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter. Such presumptions shall pertain in criminal cases until the defendant comes forward with credible evidence putting in issue the ownership or subsistence of the copyright or related right.

28. Each Party shall provide that copyright piracy involving significant willful infringements that have no direct or indirect motivation of financial gain shall be considered willful copyright piracy on a commercial scale.

Transition Periods

29. Each Party shall implement fully the obligations of this Article within the following time periods:

- (a) With respect to all obligations in paragraphs 1(c), 1(d), and 10 through 16, two years from the date of entry into force of this Agreement. In addition, Jordan agrees to accede to and ratify the *WCT* and *WPPT* within two years from the date of entry into force of this Agreement.
- (b) With respect to all obligations in paragraph 1(b), six months from the date of entry into force of this Agreement. In addition, Jordan agrees to ratify the *UPOV Convention* within one year from the date of entry into force of this Agreement.
- (c) With respect to all obligations in paragraph 22, except the obligation in footnote 10, immediately from the date of entry into force of this Agreement.
- (d) With respect to all obligations under this Article not referenced in subparagraphs (a), (b) and (c), three years from the date of entry into force of this Agreement.