

SECTION B - STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1 - COPYRIGHT AND RELATED RIGHTS

ARTICLE 17.11 - Definitions

For the purposes of this Sub-section, the terms "broadcasting", "communication to the public of a performance or a phonogram", "performers", "phonogram", "producer of a phonogram" and "publication" shall be interpreted according to the definitions of those terms in the WPPT.

ARTICLE 17.12 - Authors

Each Party shall provide authors with the exclusive right to authorise:

- (a) the temporary or permanent reproduction in any manner or form, in whole or in part, of their works;¹
- (b) any form of distribution to the public of the original and copies² of their works through sale or other transfer of ownership;³ and
- (c) 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

ARTICLE 17.13 - Performers

Each Party shall provide performers with the exclusive right to authorise:

- (a) the fixation of their unfixed performances;
- (b) the direct or indirect, temporary or permanent reproduction of their performances fixed in phonograms, in any manner or form, in whole or in part;

¹ For greater certainty, for the purposes of this Chapter, the term "work" includes a cinematographic work, photographic work and computer program.

² The Parties understand that the term "original and copies", as used in this Sub-Section, refers exclusively to fixed copies that can be put into circulation as tangible objects.

³ For the purposes of this Sub-section, the term "distribution" shall be interpreted as synonymous with the term "making available" pursuant to Article 6 of the WCT.

⁴ This point is without prejudice to point (ii) of Article 11(1), points (i) and (ii) of Article 11bis(1), point (ii) of Article 11ter(1), point (ii) of Article 14(1) and Article 14bis(1) of the Berne Convention.

- (c) the distribution to the public of the original and copies of their performances fixed in phonograms through sale or other transfer of ownership;¹
- (d) the making available to the public of their performances fixed in phonograms, 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;
- (e) the broadcasting by wireless means and the communication to the public of their unfixed performances, except where the performance is already a broadcast performance; and
- (f) the commercial rental to the public of the original and copies of their performances fixed in phonograms as determined in the law of a Party, even after distribution of them by, or pursuant to, authorisation by the performer.

ARTICLE 17.14 - Producers of phonograms

Each Party shall provide producers of phonograms with the exclusive right to authorise:

- (a) the direct or indirect, temporary or permanent, reproduction of their phonograms in any manner or form, in whole or in part;
- (b) the distribution to the public of the original and copies of their phonograms through sale or other transfer of ownership;²
- (c) the making available to the public of their phonograms, 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; and
- (d) the commercial rental to the public of the original and copies of their phonograms even after distribution of them by, or pursuant to, authorisation by the producer.

ARTICLE 17.15 - Broadcasting organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise:

- (a) the fixation of their broadcasts;

¹ For the purposes of this Sub-section, the term "distribution" shall be interpreted as synonymous with the term "making available" pursuant to Article 8 of the WPPT.

² For the purposes of this Sub-Section, the term "distribution" shall be interpreted as synonymous with the term "making available" pursuant to Article 12 of the WPPT.

- (b) the reproduction of fixations of their broadcasts; and
- (c) the rebroadcasting of their broadcasts by wireless means.

ARTICLE 17.16 - Broadcasting and communication to the public
of phonograms published for commercial purposes

1. Each Party shall provide performers and producers of phonograms the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.¹
2. Each Party may establish in its laws and regulations that the single equitable remuneration shall be claimed from the user by the performer or the producer of a phonogram or by both. Each Party may enact laws and regulations that, in the absence of an agreement between the performer and the producer of a phonogram, set the terms according to which performers and producers of phonograms shall share the single equitable remuneration.
3. For the purposes of this Article, phonograms made 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, shall be considered as if they had been published for commercial purposes.

ARTICLE 17.17 - Term of protection

1. Each Party shall provide that the rights of an author of a work shall run for the life of the author and for 70 years after the author's death, irrespective of the date when the work is lawfully made available to the public.
2. Notwithstanding paragraph 1, each Party may provide for specific rules on the calculation of the term of protection of musical compositions with words, works of joint authorship as well as cinematographic or audiovisual works. Each Party may provide for specific rules on the calculation of the term of protection of anonymous or pseudonymous works.
3. Each Party shall provide that the rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast.
4. Each Party shall provide that the rights of performers of phonograms shall expire 50 years after the date of the fixation of the performance. However, if the phonogram has been lawfully published or, where provided for by a Party, lawfully communicated to the public or otherwise lawfully made public, within this period, the term of protection shall expire 70 years from the date of the first publication or, where provided by a Party, the first such communication to the public or the first such instance of otherwise making public. Where a Party provides for two or more of these

¹ This paragraph is subject to any commitments and reservations of a Party under the WPPT.

possibilities, the term of protection shall be calculated from whichever event occurs earlier.

5. Each Party shall provide that the rights of producers of phonograms shall expire 50 years after the fixation is made. However, the term of protection shall expire 70 years from the date of the first lawful publication or, where provided by a Party's law, from the date of the first lawful communication to the public or the first lawfully making public, where such publication, communication to the public or making public occurs within the 50 years after the fixation is made.

6. The terms of protection laid down in this Article shall be calculated from 1 January of the year following the year of the event which gives rise to them. With respect to works created and performances performed before 1 January 2019, a Party may continue to apply the terms of protection that were applicable at the date of entry into force of this Agreement.

7. Each Party may provide for longer terms of protection than those provided for in this Article.

ARTICLE 17.18 - Resale right

1. Each Party shall provide, for the benefit of the author of an original work of art,¹ an inalienable resale right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.

2. The procedure for collection of the royalties, their amounts and the criteria for the works, acts of resale and authors eligible to receive the royalty shall be a matter for determination by the law of each Party.

ARTICLE 17.19 - Collective management of rights

1. The Parties shall promote cooperation between their respective collective management organisations for the purpose of fostering the availability of works and other protected subject matter in their respective territories and the transfer of rights revenue between the respective collective management organisations for the use of such works or other protected subject matter.

2. Each Party shall promote transparency of collective management organisations, in particular regarding the rights revenue they collect, the deductions they apply to the rights revenue they collect, the use of the rights revenue they collect, the distribution policy and their repertoire.

3. Each Party shall ensure that collective management associations established in its territory and representing another collective management organisation established in the territory of the other Party by way of a representation agreement, are encouraged to accurately, regularly and diligently pay amounts owed to the represented collective management organisations as well as to provide those organisations with information on the amount of the rights revenue collected on their behalf

¹ For Australia, this means visual art. For the Union, this means works of graphic or plastic art.

and any deductions from that rights revenue.

ARTICLE 17.20 - Exceptions and limitations

1. Each Party shall confine limitations or exceptions to the rights set out in Articles 17.12 (Authors) to 17.16 (Broadcasting and communication to the public of phonograms published for commercial purposes) to certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holders.
2. This Article is without prejudice to the limitations and exceptions to any rights provided by the TRIPS Agreement, or by multilateral agreements concluded or administered under the auspices of WIPO.

ARTICLE 17.21 - Protection of technological measures

1. For the purposes of this Article, the term "effective technological measures" means any technology, device, or component that, in the normal course of its operation, is used by authors, performers or producers of phonograms in connection with the exercise of their rights under this Sub-Section and that prevents or restricts acts, in respect of their works, performances or phonograms, that are not authorised by the authors, performers or producers of phonograms.
2. Each Party shall provide adequate legal protection and effective legal remedies against the unauthorised circumvention of effective technological measures, where such circumvention is carried out knowingly or with reasonable grounds to know. Each Party may provide for a specific regime for legal protection of technological measures used to protect computer programs.
3. Each Party shall provide adequate legal protection and effective legal remedies against the manufacture, import, distribution, sale, rental, offer or advertisement for sale or rental, of devices, products or components, or the provision of services which:
 - (a) are promoted, advertised or marketed for the purpose of circumvention of any effective technological measures;
 - (b) have only a limited commercially significant purpose or use other than to circumvent any effective technological measures; or
 - (c) are primarily designed, produced or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.
4. Each Party may provide for exceptions and limitations to measures implementing paragraphs 2 and 3 in accordance with its law and the relevant international agreements referred to in Article 17.5(1) (International agreements), provided that such exceptions and limitations do not significantly impair the adequacy of legal protection or the effectiveness of legal remedies provided

by those measures against the acts prescribed in paragraphs 2 and 3.

ARTICLE 17.22 - Obligations concerning rights management information

1. For the purposes of this Article, the term "rights management information" means:
 - (a) any information provided by right holders that identifies the work or other subject matter referred to in this Article, the author or any other right holder;
 - (b) information about the terms and conditions of use of the work or other subject matter referred to in this Article; or
 - (c) any numbers or codes that represent such information.
2. Paragraph 1 applies if any of the items of information referred to in paragraph 1 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.
3. Each Party shall provide adequate legal protection against any person knowingly performing without authority any of the following, if such person knows, or has reasonable grounds to know, that by doing so they are inducing, enabling, facilitating or concealing an infringement of any copyright or related rights:
 - (a) the removal or alteration of any electronic rights management information; or
 - (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject matter protected under this Sub-section from which electronic rights management information has been removed or altered without authority.
4. Each Party shall confine exceptions to measures implementing this Article to lawfully authorised activities carried out by government employees, agents, contractors for the purpose of law enforcement, intelligence, essential security or similar government purposes.