

**AGREEMENT ON TRADE-RELATED ASPECTS OF
INTELLECTUAL PROPERTY RIGHTS**
Synopsis of Original Version and Proposals for Amendment
ATRIP conference, Parma 4-6. 9. 2006

<i>Article 2</i> <i>Intellectual Property Conventions</i> 1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967). 2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.	<i>Article 2</i> <u>[AMENDED]</u> <i>Intellectual Property Conventions</i> 1. Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967) <u>and Articles 1 through 6, Articles 7 through 21 of the Berne Convention (1971) and the Appendix thereto.</u> 2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.
<i>Article 7</i> <i>Objectives</i> The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.	<i>Article 7</i> <u>[AMENDED]</u> <i>Objectives</i> The protection and enforcement of intellectual property rights should: (a) <u>contribute, in a manner conducive to social and economic welfare;</u> (i) <u>to cultural development and the enhancement of creativity, taking due account of the larger public interest, particularly in education, research and access to information and knowledge for all;</u> (ii) <u>to the promotion of innovation and technological progress, to the transfer of technology and to the dissemination of technology, information and knowledge;</u> (iii) <u>to the promotion of competition and fairness in trade in the interests of creators, authors, inventors and other producers, traders and consumers;</u> (b) <u>ensure, to the advantage of society as a whole, a balance of rights and obligations so that, in particular, the scope of the protection conferred by an intellectual property right corresponds to the contribution made to creativity, innovation and/or the functioning</u>

	<u>of markets.</u>
<i>Article 8</i> <i>Principles</i> 1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement. 2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.	<i>Article 8 [AMENDED]</i> <i>Principles</i> 1. Members <u>[should]</u>, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are <u>not inconsistent</u> with the provisions of this Agreement. 2. <u>Members shall take appropriate measures</u>, provided that they are consistent with the provisions of this Agreement, to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology. 3. <u>Members shall provide for the necessary infrastructure for adequate and cost efficient systems for acquisition and maintenance as well as for opposition, revocation and declaration of invalidity of intellectual property rights, taking into account their economic, financial and administrative constraints and their respective level of development, and provided that the procedures applied are not inconsistent with the provisions of this Agreement.</u>
	<i>Article 8a [NEW]</i> <i><u>Balance of Interests</u></i> <u>1. Members shall, in formulating or amending their laws and regulations, take due account of the objectives and principles set out in Article 7 and 8. In doing so, they shall ensure that the protection granted reflects a fair balance between private economic interests and the larger public interest as well as the interests of third parties.</u> <u>2.(a) Members shall ensure that users may, even without the consent of the right holder, use protected subject matter, provided that</u>

	<u>such use does not unreasonably prejudice the legitimate interests of the right holder, taking into due consideration the normal exploitation of the right.</u> <u>(b) In particular, the following factors shall be taken into account for the admissibility of such use:</u> <u>(i) whether it contributes to the exchange of ideas and opinions;</u> <u>(ii) whether it contributes to the dissemination of information;</u> <u>(iii) whether it concerns the private sphere of the user;</u> <u>(iv) whether it results in the creation of value-added products and services that are not in direct competition with the protected subject matter.</u> <u>(c) For the application of subparagraph 2(a), the following factors shall also be taken into account:</u> <u>(i) to which extent the right holders and/or original creators are granted equitable and appropriate compensation under efficient and practicable mechanisms;</u> <u>(ii) whether it recognises the dignity, the achievement and all the other personal interests of the original creator, be they moral or financial; and</u> <u>(iii) whether the extent and intensity of the use is proportionate to its objectives.</u>
	<i>Article 8b [NEW]</i> <i><u>Interface between Intellectual Property Rights and Competition Law</u></i> 1. <u>For the purposes of maintaining a fair balance between intellectual property rights and free competition,</u> <u>(a) Members shall provide for adequate remedies, in particular in the form of statutory or compulsory licences, or other forms of statutory limitations, if the use of subject matter protected by an intellectual property right is indispensable for competition in the relevant market, unless</u>

	<u>the application of such measures would have a significantly negative effect on the incentives to invest in research and development; or</u> <u>(b) Members should further provide for remedies, if the use of an intellectual property right results in the abuse of a dominant position on the relevant market or in behaviour violating antitrust principles.</u> <u>2. To the extent that compliance with paragraph 1 depends on the establishment of an efficient system for control of competition, Article 8.3 shall apply <i>mutatis mutandis</i>.</u>
PART II STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS SECTION 1: COPYRIGHT AND RELATED RIGHTS <i>Article 9</i> <i>Relation to the Berne Convention</i> 1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6<i>bis</i> of that Convention or of the rights derived therefrom. 2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.	PART II STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS SECTION 1: COPYRIGHT AND RELATED RIGHTS <i>Article 9 [AMENDED]</i> <u><i>Protected Subject Matter</i></u> Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.
<i>Article 13</i> <i>Limitations and Exceptions</i> Members 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	<i>Article 13 [NEW]</i> <u><i>Limitations</i></u> 1. <u>In accordance with articles 7 to 8b the exclusive copyright or related rights shall not extend to:</u> (a) <u>reproduction for purely technical</u>

interests of the right holder.	<u>purposes to the extent that this is necessary to enable communication and/or legitimate use;</u> <u>(b) use made for the purpose of:</u> <u>(i) quotation;</u> <u>(ii) illustration for teaching and/or scientific research;</u> <u>(iii) news reporting;</u> <u>to the extent that it is necessary for the relevant purpose, provided that reference is made to the source, notwithstanding the right of the personal creator to have the work attributed to him, and to oppose use that amounts to a massive and manifest mutilation of the work in its original form.</u> <u>(c) specific acts of reproduction made by publicly accessible libraries, educational establishments, museums, or, archives, which are not for direct or indirect economic or commercial advantage.</u> <u>2. Furthermore, the exclusive protection conferred by copyright shall not extend to personal use made in privacy, except for certain special cases where denial of protection would manifestly conflict with the principles set out in Article 8a.2.</u> <u>3. Members may further restrict the protection conferred by copyright subject to the provisions of Article 8a.2.</u>
SECTION 2: TRADEMARKS <i>Article 17</i> <i>Exceptions</i> Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.	SECTION 2: TRADEMARKS <i>Article 17 <u>[NEW]</u></i> <i><u>Limitations</u></i> <u>1. In accordance with articles 7 to 8b the exclusive rights to a trademark shall not extend to:</u> <u>(a) strictly non-commercial use;</u> <u>(b) use in the course of trade</u> <u>(i) for descriptive purposes, like 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;</u>

	<u>(ii) in order to provide information in connection with sales of goods or offering of services that are legitimately commercialised on the market concerned;</u> <u>(iii) for other marketing purposes providing relevant information, in particular comparative advertising;</u> <u>(iv) ...in a satirical or parodist manner or other modes of use covered by rules applying to freedom of speech and/or freedom of art in the Member concerned;</u> <u>(v)...of a natural person's own name, in order to designate goods or services originating from the business carried out by, or in cooperation with, that person, or to identify that business.</u> <u>provided that such use is in accordance with honest practices in industrial or commercial matters. In particular, use shall be deemed inadmissible that is likely to mislead the average consumer about the existence of a commercial link between the holder of the trade mark and a third party.</u> <u>2. Members may further restrict the protection conferred by trade marks subject to the provisions of Article 8a.2.</u>
SECTION 4: INDUSTRIAL DESIGNS <i>Article 26</i> <i>Protection</i> 1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes. 2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial 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. 3. The duration of protection available	SECTION 4: INDUSTRIAL DESIGNS <i>Article 26 <u>[AMENDED]</u></i> <i>Protection</i> 1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes. 2. (a) <u>In accordance with articles 7 to 8b, the exclusive rights conferred by a design shall not extend to:</u> <u>(i) strictly private use;</u> <u>(ii) acts of reproduction for the purposes of making citations or of teaching and/or scientific research;</u> <u>(iii) use in accordance with Article 27 of the</u>

shall amount to at least 10 years.	<u>Convention on International Civil Aviation of December 7, 1944,.</u> <u>provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.</u> <u>(b) Members may further restrict the protection conferred by design rights subject to the provisions of Article 8a.2.</u> 3. The duration of protection available shall amount to at least 10 years.
SECTION 5: PATENTS <i>Article 27</i> <i>Patentable Subject Matter</i> 1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced. 2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect <i>ordre public</i> 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. 3. Members may also exclude from patentability: (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;	SECTION 5: PATENTS <i>Article 27 [AMENDED]</i> <i>Patentable Subject Matter</i> 1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, <u>patents shall be available and patent rights enjoyable without discrimination as to the place of invention and whether products are imported or locally produced.</u> 2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect <i>ordre public</i> 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. 3. Members may also exclude from patentability: (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; (b) plants and animals other than

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective <i>sui generis</i> system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.	micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective <i>sui generis</i> system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.
<i>Article 28</i> <i>Rights Conferred</i> 1. A patent shall confer on its owner the following exclusive rights: (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing for these purposes that product; (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process. 2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.	<i>Article 28 [AMENDED]</i> <i>Rights Conferred</i> 1. A patent shall confer on its owner the following exclusive rights: (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing for these purposes that product; <u>provided that the scope of the patent shall be limited in accordance with the function disclosed in the description and drawings;</u> (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process. 2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.
<i>Article 29</i>	<i>Article 29 [AMENDED]</i>

<i>Conditions on Patent Applicants</i> 1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application. 2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.	<i>Conditions on Patent Applicants</i> 1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application. <u>The claims for a product shall be limited to the function disclosed in the description and drawings.</u> 2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.
<i>Article 30</i> <i>Exceptions to Rights Conferred</i> Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.	<i>Article 30 <u>[NEW]</u></i> <i>Limitations</i> 1. <u>In accordance with articles 7 to 8b the exclusive rights conferred by a patent shall not extend to:</u> (a) <u>strictly private use and on a non commercial scale, or for non-commercial purposes;</u> (b) <u>use of the invention for research;</u> (c) <u>use to the extent necessary to study or test the functioning of a protected invention (reverse engineering);</u> (d) <u>experimentation on the invention to test or improve on it, or for the purpose of finding new information. However, subject to Article 8a, Members are free to provide that such information may not be used in conflict with the commercial interests of the patent holder;</u> (e) <u>use of a protected invention for teaching purposes;</u> (f) <u>use for repairment, provided that such use is strictly limited to acts necessary for that purpose;</u> (g) <u>preparation of medicines under individual prescriptions;</u> (h) <u>experiments made for purposes of</u>

	<u>seeking regulatory approval for the marketing of a product after the expiration of the patent;</u> (i) <u>use of the invention by a third party that had used it <i>bona fide</i> before the date of application of the patent;</u> (j) <u>use in accordance with Article 27 of the Convention on International Civil Aviation of December 7, 1944.</u> 2. <u>Members may further restrict the protection conferred by patents subject to the provisions of Article 8a.2.</u>
SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES <i>Article 40</i> 1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology. 2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member. 3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws	SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES <i>Article 40 [AMENDED]</i> 1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology. 2. <u>Members shall adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of the Member concerned. Members may specify in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market.</u> 3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure

and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member. 4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.	compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member. 4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.
PART III ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS SECTION 1: GENERAL OBLIGATIONS <i>Article 41</i> 1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse. 2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted	PART III ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS SECTION 1: GENERAL OBLIGATIONS <i>Article 41</i> <u><i>Enforcement Procedures [HEADLINE ADDED]</i></u> 1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse. 2. Procedures concerning the enforcement of intellectual property rights

delays. 3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard. 4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases. 5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.	shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays. 3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard. 4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases. 5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.
	<i>Article 41a [NEW]</i> <u><i>Remedies against Misuse of Intellectual Property Rights</i></u> Members shall provide for proportionate, efficient and deterrent remedies against misuse of intellectual property rights, in particular the making of unjustified threats.
	<i>Article 41b [NEW]</i> <u><i>Jurisdiction and Choice of Law in Transborder Conflicts in Intellectual Property Matters</i></u> 1. Members shall ensure that, subject to compliance with principles of due process

	<u>and of fair balance between the interests of the parties, the rules applied with regard to jurisdiction in transborder conflicts in intellectual property matters do not unduly hamper an efficient pursuit of justice.</u> <u>2. Members shall ensure that the rules applied with regard to choice of law in transborder conflicts in intellectual property matters pay due respect to the territoriality principle, thereby acknowledging the sovereign power of other Members to regulate, within the boundaries of obligations resulting from international agreements, the law governing acquisition, scope and content of intellectual property rights with regard to their respective territories. As a matter of principle, this results in the application of the law of the country for which protection is sought (<i>lex protectionis</i>).</u> <u>3. Derogation from <i>lex protectionis</i> shall only be permitted</u> <u>(a) on the basis of an agreement between the parties, to the extent that is deemed acceptable with a view to the specific nature of the intellectual property right concerned, or to intellectual property rights as such;</u> <u>(b) to the extent that, with regard to the ubiquitous nature of an infringement, the application of <i>lex protectionis</i> would result in serious impediments for a fair and efficient enforcement of intellectual property rights.</u>
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