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MTN.GNG/NG11/W/66
28 February 1990
Special Distribution

Original: English

Negotiating Group on Trade-Related Aspects
of Intellectual Property Rights, including
Trade in Counterfeit Goods

BENEFICIARIES OF AND EXCEPTIONS TO NATIONAL TREATMENT UNDER TREATIES ADMINISTERED BY WIPO

Communication from the World Intellectual Property Organization

The following communication, dated 22 February 1990, has been received from the International Bureau of the World Intellectual Property Organization.

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1. The present document has been prepared by the International Bureau of the World Intellectual Property Organization (WIPO) following a decision taken by the Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (TRIPS) at its meeting of February 5 and 6 1990, inviting "WIPO to furnish it:

- A list of the categories of persons that are beneficiaries of national treatment obligations under the treaties administered by WIPO;

- A list of the exceptions to national treatment contained in the treaties administered by WIPO"

(letter of February 12 1990, from the Chairman of TRIPS to the Director General of WIPO).

2. The present document only deals with those treaties, containing provisions on national treatment, which are exclusively administered by WIPO, namely, the Paris Convention for the Protection of Industrial Property (Act of Stockholm of 1967) (hereinafter referred to as "the Paris Convention"), the Berne Convention for the Protection of Literary and Artistic Works (Act of Paris of 1971) (hereinafter referred to as "the Berne Convention") and the Treaty on Intellectual Property in Respect of Integrated Circuits adopted at Washington on May 26 1989 (hereinafter referred to as "the IPIC Treaty"). The relevant provisions of the Paris Convention, the Berne Convention and the IPIC Treaty are reproduced in the Annex.

I. LIST OF BENEFICIARIES (CATEGORIES OF PERSONS)

(a) under the Paris Convention

3. The following categories of persons are beneficiaries of national treatment obligations under the Paris Convention:

i) nationals of any country party to the Paris Convention (Paris Convention, Article 2(1));

ii) nationals of any country not party to the Paris Convention who are domiciled or who have real and effective industrial or commerical establishments in the territory of one of the countries party to the Paris Convention (Paris Convention, Article 3).

(b) under the Berne Convention

4. The following categories of persons are beneficiaries of national treatment obligations under the Berne Convention:

i) authors who are nationals of one of the countries party to the Berne Convention, or who are not nationals of such a country but have their habitual residence in such a country, for their works, whether published or not (Berne Convention, Article 3(1)(a) and (2));

ii) authors who are not nationals of one of the countries party to the Berne Convention and do not have their habitual residence in such a country, for their works first published in one of the countries party to the Berne Convention, or for their works published simultaneously in a country not party to the Berne Convention and in a country party to the Berne Convention (Berne Convention, Article 3(1)(b) and (2)); a work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication (Berne Convention, Article 3(4));

iii) authors (other than those who are referred to in items (i) and (ii) of this paragraph) of cinematographic works the maker of which has his headquarters or habitual residence in one of the countries party to the Berne Convention (Berne Convention, Article 4(a));

iv) authors (other than those who are referred to in items (i) and (ii) of this paragraph) of works of architecture erected in a country party to the Berne Convention or of other artistic works incorporated in a building or other structure located in such a country (Berne Convention, Article 4(b)).

(c) under the IPIC Treaty

5. The following categories of persons are beneficiaries of national treatment obligations under the IPIC Treaty:

i) natural persons who are nationals of any State party to the IPIC Treaty or of any of the States members of any Intergovernmental Organization party to the IPIC Treaty (IPIC Treaty, Article 5(1)(i) and (3));

ii) natural persons who are domiciled in the territory of any State party to the IPIC Treaty or in the territory in which the constituting treaty of any Intergovernmental Organization party to the IPIC Treaty applies (IPIC Treaty, Articles 2(vi) and 5(1)(i));

iii) legal entities which or natural persons who, in the territory of any State party to the IPIC Treaty or in the territory in which the constituting treaty of any Intergovernmental Organization party to the IPIC Treaty applies, have a real and effective establishment for the creation of layout-designs (topographies) or the production of integrated circuits (IPIC Treaty, Articles 2(vi) and 5(1)(ii).

II. LIST OF EXCEPTIONS TO NATIONAL TREATMENT

(a) under the Paris Convention

6. The following exceptions to national treatment are contained in the Paris Convention:

i) the provisions of the laws of each of the countries party to the Paris Convention relating to judicial or administrative procedure and to jurisdiction, which may be required by the laws on industrial property, are

expressly reserved (Paris Convention, Article 2(3));

ii) the provisions of the laws of each of the countries party to the Paris Convention relating to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property, are expressly reserved (Paris Convention, Article 2(3)).

(b) under the Berne Convention

7. The following exceptions to national treatment are contained in the Berne Convention:

i) where a work is protected in the country or origin solely as an industrial design - and not (also) as a work of applied art, i.e., by copyright law - that work is entitled in another country party to the Berne Convention only to such special protection as is granted in that country to industrial designs - even though copyright protection is available in that country (Berne Convention, Article 2(7), second sentence, first part);

ii) where a country not party to the Berne Convention fails to protect in an adequate manner the works of authors who are nationals of one of the countries party to the Berne Convention, the latter country may restrict the protection given - on the basis of their first publication in that country - to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries party to the Berne Convention; if the country of first publication avails itself of this right, the other countries party to the Berne Convention are not required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication (Berne Convention, Article 6(1));

iii) in the country where protection is claimed, the term of protection shall not, unless the legislation of that country otherwise provides, exceed the term fixed in the country of origin of the work (Berne Convention, Article 7(8));

iv) the right ("droit de suite"), enjoyed by the author, or, after his death, by the persons or institutions authorized by national legislation, to an interest in any sale of the work - which is either an original work of art or an original manuscript of a writer or composer - subsequent to the first transfer by the author of the work may be claimed in a country party to the Berne Convention only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this right is claimed (Berne Convention, Article 14ter(1) and (2));

v) in relation to the right of translation of works whose country of origin is a country - other than certain developing countries - which, having used the limited possibility of reservations available in that respect*, has declared its intention to apply the provisions on the right of translation contained in the Berne Convention of 1886 as completed by the Additional Act of Paris of 1896 (concerning the restriction, under certain conditions, of the term of protection of the right of translation to ten years from the first publication of the work), any country has the right to apply a protection which is equivalent to the protection granted by the country of origin (Berne Convention, Article 30(2)(b), second sentence).

(c) under the IPIC Treaty

8. The following exceptions to national treatment are contained in the IPIC Treaty:

i) any Contracting Party is free not to apply national treatment as far as any obligations to appoint an agent or to designate an address for service are concerned (IPIC Treaty, Article 5(2));

ii) any Contracting Party is free not to apply national treatment as far as the special rules applicable to foreigners in court proceeedings are concerned (IPIC Treaty, Article 5(2)).

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*Only four States have maintained such a reservation.

[Annex follows]

ANNEX

Relevant Provisions of the Paris Convention

Article 2

(1) Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.

(2) However, no requirement as to domicile or establishment in the country where protection is claimed may be imposed upon nationals of countries of the Union for the enjoyment of any industrial property rights.

(3) The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedure and to jurisdiction, and to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property are expressly reserved.

Article 3

Nationals of countries outside the Union who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Union shall be treated in the same manner as nationals of the countries of the Union.

Relevant Provisions of the Berne Convention

Article 2

(7) Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.

Article 3

(1) The protection of this Convention shall apply to:

(a) authors who are nationals of one of the countries of the Union, for their works whether published or not;

(b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

(2) Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.

(3) The expression "published works" means works published with the consent of their authors, whatever

may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 4

The protection of this Convention shall apply, even if the conditions of Article 3 are not fulfilled, to:

(a) authors of cinematographic works the maker of which has his headquarters or habitual residence in one of the countries of the Union;

(b) authors of works of architecture erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.

Article 5

(1) Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country or origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(3) Protection in the country or origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.

(4) The country of origin shall be considered to be:

(a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection;

(b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;

(c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that:

(i) when these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, the country of origin shall be that country, and

(ii) when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, the country of origin shall be that country.

Article 6

(1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

Article 7

(8) In any case, the term shall be governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.

Article 14ter

(1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

Relevant Provisions of the IPIC Treaty

Article 2

For the purposes of this Treaty:

(v) "Contracting Party" means a State, or an Intergovernmental Organization meeting the requirements of item (x), party to this Treaty,

(vi) "territory of a Contracting Party" means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an Intergovernmental Organization, the territory in which the constituting treaty of that Intergovernmental Organization applies,

(x) "Intergovernmental Organization" means an organization constituted by, and composed of, States of any region of the world, which has competence in respect of matters governed by this Treaty, has its own legislation providing for intellectual property protection in respect of layout-designs (topographies) and binding on all its member States, and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Treaty.

Article 5

(1) [National Treatment] Subject to compliance with its obligation referred to in Article 3(1)(a), each Contracting Party shall, in respect of the intellectual property protection of layout-designs (topographies), accord, within its territory,

(i) to natural persons who are nationals of, or are domiciled in the territory of, any of the other Contracting Parties, and

(ii) to legal entities which or natural persons who, in the territory of any of the other Contracting Parties, have a real and effective establishment for the creation of layout-designs (topographies) or the production of integrated circuits,

the same treatment that it accords to its own nationals.

(2) [Agents, Addresses for Service, Court Proceedings] Notwithstanding paragraph (1), any Contracting Party is free not to apply national treatment as far as any obligations to appoint an agent or to designate an address for service are concerned or as far as the special rules applicable to foreigners in court proceedings are concerned.

(3) [Application of Paragraphs (1) and (2) to Intergovernmental Organizations] Where the Contracting Party is an Intergovernmental Organization, "nationals" in paragraph (1) means nationals of any of the States members of that Organization.

Article 6

(1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

Article 7

(8) In any case, the term shall be governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.

Article 14ter

(1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

Article 30

(2)(b) Any country outside the Union may declare, in acceding to this Convention and subject to Article V(2) of the Appendix, that it intends to substitute, temporarily at least, for Article 8 of this Act concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into a language in general use in the said country. Subject to Article I(6)(b) of the Appendix, any country has the right to apply, in relation to the right of

translation of works whose country of origin is a country availing itself of such a reservation, a protection which is equivalent to the protection granted by the latter country.