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Article 5

...

(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 of 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 law of the country where protection is claimed.

...

Article 9

(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interest of the author.

...

Article 1: Relation to the Berne Convention

...

(4) Contracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention.¹

...

Article 8: Right of Communication to the Public

Without prejudice to the provisions of Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii) and 14*bis*(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing 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 these works from a place and at a time individually chosen by them.²

...

Article 10: Limitations and Exceptions

- (1) Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.
- (2) Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.³

Article 11: Obligations Concerning Technological Measures

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or

¹ **Agreed statement concerning article 1(4):** The reproduction right, as set out in Article 9 of the Berne Convention, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to the use of works in digital form. It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of Article 9 of the Berne Convention.

² **Agreed statement concerning article 8:** It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Treaty or the Berne Convention. It is further understood that nothing in Article 8 precludes a Contracting Party from applying Article 11*bis*(2).

³ **Agreed statement concerning article 10:** It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.

It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.

permitted by law.

Article 12: Obligations Concerning Rights Management Information

- (1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty or the Berne Convention:
 - (i) to remove or alter any electronic rights management information without authority;
 - (ii) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.
- (2) As used in this Article, "rights management information" means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.⁴

⁴ **Agreed statement concerning article 12:** It is understood that the reference to "infringement of any right covered by this Treaty or the Berne Convention" includes both exclusive rights and rights of remuneration.

It is further understood that Contracting Parties will not rely on this Article to devise or implement rights management systems that would have the effect of imposing formalities which are not permitted under the Berne Convention or this Treaty, prohibiting the free movement of goods or impeding the enjoyment of rights under this Treaty.

...

CHAPTER II: RIGHTS OF PERFORMERS

...

Article 7: Right of Reproduction

Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in phonograms, in any manner or form.⁵

...

Article 10: Right of Making Available of Fixed Performances

Performers shall enjoy the exclusive right of authorizing 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.

CHAPTER III: RIGHTS OF PRODUCERS OF PHONOGRAMS

Article 11: Right of Reproduction

Producers of phonograms shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their phonograms, in any manner or form.⁶

...

Article 14: Right of Making Available of Phonograms

Producers of phonograms shall enjoy the exclusive right of authorizing 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.

CHAPTER IV: COMMON PROVISIONS

...

Article 16: Limitations and Exceptions

- (1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers and producers of phonograms as they provide for, in their national legislation, in connection with the

⁵ **Agreed statement concerning Articles 7, 11 and 16:** The reproduction right, as set out in Articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

⁶ **Agreed statement concerning Articles 7, 11 and 16:** The reproduction right, as set out in Articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

protection of copyright in literary and artistic works.

- (2) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance or phonogram and do not unreasonably prejudice the legitimate interests of the performer or of the producer of the phonogram.^{7 8}

...

Article 18: Obligations concerning Technological Measures

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law.

Article 19: Obligations concerning Rights Management Information

- (1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:
- (i) to remove or alter any electronic rights management information without authority;
 - (ii) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances, copies of fixed performances or phonograms knowing that electronic rights management information has been removed or altered without authority.
- (2) As used in this Article, “rights management information” means information which identifies the performer, the performance of the performer, the producer of the phonogram, the phonogram, the owner of any right in the performance or phonogram, or information about the terms and conditions of use of the performance or phonogram, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a fixed performance or a phonogram or appears in connection with the communication or making available of a fixed performance or a phonogram to the public.⁹

...

⁷ **Agreed statement concerning Articles 7, 11 and 16:** The reproduction right, as set out in Articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

⁸ **Agreed statement concerning Article 16:** The agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty is applicable mutatis mutandis also to Article 16 (on Limitations and Exceptions) of the WIPO Performances and Phonograms Treaty.

⁹ **Agreed statement concerning Article 19:** The agreed statement concerning Article 12 (on Obligations concerning Rights Management Information) of the WIPO Copyright Treaty is applicable mutatis mutandis also to Article 19 (on Obligations concerning Rights Management Information) of the WIPO Performances and Phonograms Treaty.

4 DIRECTIVE 2000/31/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 8 JUNE 2000 ON CERTAIN LEGAL ASPECTS OF INFORMATION SOCIETY SERVICES, IN PARTICULAR ELECTRONIC COMMERCE, IN THE INTERNAL MARKET

CHAPTER I: GENERAL PROVISIONS

Article 1: Objective and scope

1. This Directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States.
2. This Directive approximates, to the extent necessary for the achievement of the objective set out in paragraph 1, certain national provisions on information society services relating to the internal market, the establishment of service providers, commercial communications, electronic contracts, the liability of intermediaries, codes of conduct, out-of-court dispute settlements, court actions and cooperation between Member States.
3. This Directive complements Community law applicable to information society services without prejudice to the level of protection for, in particular, public health and consumer interests, as established by Community acts and national legislation implementing them in so far as this does not restrict the freedom to provide information society services.
4. This Directive does not establish additional rules on private international law nor does it deal with the jurisdiction of Courts.
5. This Directive shall not apply to:
 - (a) the field of taxation;
 - (b) questions relating to information society services covered by Directives 95/46/EC and 97/66/EC;
 - (c) questions relating to agreements or practices governed by cartel law;
 - (d) the following activities of information society services:
 - the activities of notaries or equivalent professions to the extent that they involve a direct and specific connection with the exercise of public authority,
 - the representation of a client and defence of his interests before the courts,
 - gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.
6. This Directive does not affect measures taken at Community or national level, in the respect of Community law, in order to promote cultural and linguistic diversity and to ensure the defence of pluralism.

Article 2: Definitions

For the purpose of this Directive, the following terms shall bear the following meanings:

- (a) "information society services": services within the meaning of Article 1(2) of Directive 98/34/EC as amended by Directive 98/48/EC;
- (b) "service provider": any natural or legal person providing an information society service;
- (c) "established service provider": a service provider who effectively pursues an economic activity using a fixed establishment for an indefinite period. The presence and use of the technical means and technologies required to provide the service do not, in themselves, constitute an establishment of the provider;
- (d) "recipient of the service": any natural or legal person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;
- (e) "consumer": any natural person who is acting for purposes which are outside his or her trade, business or profession;
- (f) "commercial communication": any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession. The following do not in themselves constitute commercial communications:
 - information allowing direct access to the activity of the company, organisation or person, in particular a domain name or an electronic-mail address,
 - communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, particularly when this is without financial consideration;
- (g) "regulated profession": any profession within the meaning of either Article 1(d) of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three-years' duration or of Article 1(f) of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC;
- (h) "coordinated field": requirements laid down in Member States' legal systems applicable to information society service providers or information society services, regardless of whether they are of a general nature or specifically designed for them.
 - (i) The coordinated field concerns requirements with which the service provider has to comply in respect of:
 - the taking up of the activity of an information society service, such as requirements concerning qualifications, authorisation or notification,
 - the pursuit of the activity of an information society service, such as requirements concerning the behaviour of the service provider, requirements regarding the quality or content of the service including those applicable to advertising and contracts, or requirements concerning the liability of the service provider;
 - (ii) The coordinated field does not cover requirements such as:
 - requirements applicable to goods as such,
 - requirements applicable to the delivery of goods,
 - requirements applicable to services not provided by electronic means.

Article 3: Internal market

1. Each Member State shall ensure that the information society services provided by a service provider established on its territory comply with the national provisions applicable in the Member State in question which fall within the coordinated field.
2. Member States may not, for reasons falling within the coordinated field, restrict the

freedom to provide information society services from another Member State.

3. Paragraphs 1 and 2 shall not apply to the fields referred to in the Annex.
4. Member States may take measures to derogate from paragraph 2 in respect of a given information society service if the following conditions are fulfilled:
 - (a) the measures shall be:
 - (i) necessary for one of the following reasons:
 - public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons,
 - the protection of public health,
 - public security, including the safeguarding of national security and defence,
 - the protection of consumers, including investors;
 - (ii) taken against a given information society service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives;
 - (iii) proportionate to those objectives;
 - (b) before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Member State has:
 - asked the Member State referred to in paragraph 1 to take measures and the latter did not take such measures, or they were inadequate,
 - notified the Commission and the Member State referred to in paragraph 1 of its intention to take such measures.
5. Member States may, in the case of urgency, derogate from the conditions stipulated in paragraph 4(b). Where this is the case, the measures shall be notified in the shortest possible time to the Commission and to the Member State referred to in paragraph 1, indicating the reasons for which the Member State considers that there is urgency.
6. Without prejudice to the Member State's possibility of proceeding with the measures in question, the Commission shall examine the compatibility of the notified measures with Community law in the shortest possible time; where it comes to the conclusion that the measure is incompatible with Community law, the Commission shall ask the Member State in question to refrain from taking any proposed measures or urgently to put an end to the measures in question.

CHAPTER II: PRINCIPLES

Section 1: Establishment and information requirements

Article 4: Principle excluding prior authorisation

1. Member States shall ensure that the taking up and pursuit of the activity of an information society service provider may not be made subject to prior authorisation or any other requirement having equivalent effect.

2. Paragraph 1 shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at information society services, or which are covered by Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services.

Article 5: General information to be provided

1. In addition to other information requirements established by Community law, Member States shall ensure that the service provider shall render easily, directly and permanently accessible to the recipients of the service and competent authorities, at least the following information:
 - (a) the name of the service provider;
 - (b) the geographic address at which the service provider is established;
 - (c) the details of the service provider, including his electronic mail address, which allow him to be contacted rapidly and communicated with in a direct and effective manner;
 - (d) where the service provider is registered in a trade or similar public register, the trade register in which the service provider is entered and his registration number, or equivalent means of identification in that register;
 - (e) where the activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority;
 - (f) as concerns the regulated professions:
 - any professional body or similar institution with which the service provider is registered,
 - the professional title and the Member State where it has been granted,
 - a reference to the applicable professional rules in the Member State of establishment and the means to access them;
 - (g) where the service provider undertakes an activity that is subject to VAT, the identification number referred to in Article 22(1) of the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment.
2. In addition to other information requirements established by Community law, Member States shall at least ensure that, where information society services refer to prices, these are to be indicated clearly and unambiguously and, in particular, must indicate whether they are inclusive of tax and delivery costs.

Section 2: Commercial communications

Article 6: Information to be provided

In addition to other information requirements established by Community law, Member States shall ensure that commercial communications which are part of, or constitute, an information society service comply at least with the following conditions:

- (a) the commercial communication shall be clearly identifiable as such;
- (b) the natural or legal person on whose behalf the commercial communication is made shall be clearly identifiable;
- (c) promotional offers, such as discounts, premiums and gifts, where permitted in the

Member State where the service provider is established, shall be clearly identifiable as such, and the conditions which are to be met to qualify for them shall be easily accessible and be presented clearly and unambiguously;

- (d) promotional competitions or games, where permitted in the Member State where the service provider is established, shall be clearly identifiable as such, and the conditions for participation shall be easily accessible and be presented clearly and unambiguously.

Article 7: Unsolicited commercial communication

1. In addition to other requirements established by Community law, Member States which permit unsolicited commercial communication by electronic mail shall ensure that such commercial communication by a service provider established in their territory shall be identifiable clearly and unambiguously as such as soon as it is received by the recipient.
2. Without prejudice to Directive 97/7/EC and Directive 97/66/EC, Member States shall take measures to ensure that service providers undertaking unsolicited commercial communications by electronic mail consult regularly and respect the opt-out registers in which natural persons not wishing to receive such commercial communications can register themselves.

Article 8: Regulated professions

1. Member States shall ensure that the use of commercial communications which are part of, or constitute, an information society service provided by a member of a regulated profession is permitted subject to compliance with the professional rules regarding, in particular, the independence, dignity and honour of the profession, professional secrecy and fairness towards clients and other members of the profession.
2. Without prejudice to the autonomy of professional bodies and associations, Member States and the Commission shall encourage professional associations and bodies to establish codes of conduct at Community level in order to determine the types of information that can be given for the purposes of commercial communication in conformity with the rules referred to in paragraph 1.
3. When drawing up proposals for Community initiatives which may become necessary to ensure the proper functioning of the Internal Market with regard to the information referred to in paragraph 2, the Commission shall take due account of codes of conduct applicable at Community level and shall act in close cooperation with the relevant professional associations and bodies.
4. This Directive shall apply in addition to Community Directives concerning access to, and the exercise of, activities of the regulated professions.

Section 3: Contracts concluded by electronic means

Article 9: Treatment of contracts

1. Member States shall ensure that their legal system allows contracts to be concluded

by electronic means. Member States shall in particular ensure that the legal requirements applicable to the contractual process neither create obstacles for the use of electronic contracts nor result in such contracts being deprived of legal effectiveness and validity on account of their having been made by electronic means.

2. Member States may lay down that paragraph 1 shall not apply to all or certain contracts falling into one of the following categories:
 - (a) contracts that create or transfer rights in real estate, except for rental rights;
 - (b) contracts requiring by law the involvement of courts, public authorities or professions exercising public authority;
 - (c) contracts of suretyship granted and on collateral securities furnished by persons acting for purposes outside their trade, business or profession;
 - (d) contracts governed by family law or by the law of succession.
3. Member States shall indicate to the Commission the categories referred to in paragraph 2 to which they do not apply paragraph 1. Member States shall submit to the Commission every five years a report on the application of paragraph 2 explaining the reasons why they consider it necessary to maintain the category referred to in paragraph 2(b) to which they do not apply paragraph 1.

Article 10: Information to be provided

1. In addition to other information requirements established by Community law, Member States shall ensure, except when otherwise agreed by parties who are not consumers, that at least the following information is given by the service provider clearly, comprehensibly and unambiguously and prior to the order being placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the service provider and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors prior to the placing of the order;
 - (d) the languages offered for the conclusion of the contract.
2. Member States shall ensure that, except when otherwise agreed by parties who are not consumers, the service provider indicates any relevant codes of conduct to which he subscribes and information on how those codes can be consulted electronically.
3. Contract terms and general conditions provided to the recipient must be made available in a way that allows him to store and reproduce them.
4. Paragraphs 1 and 2 shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

Article 11: Placing of the order

1. Member States shall ensure, except when otherwise agreed by parties who are not consumers, that in cases where the recipient of the service places his order through technological means, the following principles apply:
 - the service provider has to acknowledge the receipt of the recipient's order without undue delay and by electronic means,

- the order and the acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.
2. Member States shall ensure that, except when otherwise agreed by parties who are not consumers, the service provider makes available to the recipient of the service appropriate, effective and accessible technical means allowing him to identify and correct input errors, prior to the placing of the order.
 3. Paragraph 1, first indent, and paragraph 2 shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

Section 4: Liability of intermediary service providers

Article 12: "Mere conduit"

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, Member States shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:
 - (a) does not initiate the transmission;
 - (b) does not select the receiver of the transmission; and
 - (c) does not select or modify the information contained in the transmission.
2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.
3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

Article 13: "Caching"

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:
 - (a) the provider does not modify the information;
 - (b) the provider complies with conditions on access to the information;
 - (c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
 - (d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
 - (e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at

the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

2. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

Article 14: Hosting

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:
 - (a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
 - (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.
2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.
3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for Member States of establishing procedures governing the removal or disabling of access to information.

Article 15: No general obligation to monitor

1. Member States shall not impose a general obligation on providers, when providing the services covered by Articles 12, 13 and 14, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.
2. Member States may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

CHAPTER III: IMPLEMENTATION

Article 16: Codes of conduct

1. Member States and the Commission shall encourage:
 - (a) the drawing up of codes of conduct at Community level, by trade, professional and consumer associations or organisations, designed to contribute to the proper implementation of Articles 5 to 15;
 - (b) the voluntary transmission of draft codes of conduct at national or Community

- level to the Commission;
- (c) the accessibility of these codes of conduct in the Community languages by electronic means;
- (d) the communication to the Member States and the Commission, by trade, professional and consumer associations or organisations, of their assessment of the application of their codes of conduct and their impact upon practices, habits or customs relating to electronic commerce;
- (e) the drawing up of codes of conduct regarding the protection of minors and human dignity.

2. Member States and the Commission shall encourage the involvement of associations or organisations representing consumers in the drafting and implementation of codes of conduct affecting their interests and drawn up in accordance with paragraph 1(a). Where appropriate, to take account of their specific needs, associations representing the visually impaired and disabled should be consulted.

Article 17: Out-of-court dispute settlement

1. Member States shall ensure that, in the event of disagreement between an information society service provider and the recipient of the service, their legislation does not hamper the use of out-of-court schemes, available under national law, for dispute settlement, including appropriate electronic means.
2. Member States shall encourage bodies responsible for the out-of-court settlement of, in particular, consumer disputes to operate in a way which provides adequate procedural guarantees for the parties concerned.
3. Member States shall encourage bodies responsible for out-of-court dispute settlement to inform the Commission of the significant decisions they take regarding information society services and to transmit any other information on the practices, usages or customs relating to electronic commerce.

Article 18: Court actions

1. Member States shall ensure that court actions available under national law concerning information society services' activities allow for the rapid adoption of measures, including interim measures, designed to terminate any alleged infringement and to prevent any further impairment of the interests involved.
2. The Annex to Directive 98/27/EC shall be supplemented as follows:

"11. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects on information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1)."

Article 19: Cooperation

1. Member States shall have adequate means of supervision and investigation necessary to implement this Directive effectively and shall ensure that service providers supply them with the requisite information.

2. Member States shall cooperate with other Member States; they shall, to that end, appoint one or several contact points, whose details they shall communicate to the other Member States and to the Commission.
3. Member States shall, as quickly as possible, and in conformity with national law, provide the assistance and information requested by other Member States or by the Commission, including by appropriate electronic means.
4. Member States shall establish contact points which shall be accessible at least by electronic means and from which recipients and service providers may:
 - (a) obtain general information on contractual rights and obligations as well as on the complaint and redress mechanisms available in the event of disputes, including practical aspects involved in the use of such mechanisms;
 - (b) obtain the details of authorities, associations or organisations from which they may obtain further information or practical assistance.
5. Member States shall encourage the communication to the Commission of any significant administrative or judicial decisions taken in their territory regarding disputes relating to information society services and practices, usages and customs relating to electronic commerce. The Commission shall communicate these decisions to the other Member States.

Article 20: Sanctions

Member States shall determine the sanctions applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are enforced. The sanctions they provide for shall be effective, proportionate and dissuasive.

CHAPTER IV: FINAL PROVISIONS

Article 21: Re-examination

1. Before 17 July 2003, and thereafter every two years, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, accompanied, where necessary, by proposals for adapting it to legal, technical and economic developments in the field of information society services, in particular with respect to crime prevention, the protection of minors, consumer protection and to the proper functioning of the internal market.
2. In examining the need for an adaptation of this Directive, the report shall in particular analyse the need for proposals concerning the liability of providers of hyperlinks and location tool services, "notice and take down" procedures and the attribution of liability following the taking down of content. The report shall also analyse the need for additional conditions for the exemption from liability, provided for in Articles 12 and 13, in the light of technical developments, and the possibility of applying the internal market principles to unsolicited commercial communications by electronic mail.

Article 22: Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 17 January 2002. They shall forthwith inform the Commission thereof.
2. When Member States adopt the measures referred to in paragraph 1, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The methods of making such reference shall be laid down by Member States.

Article 23: Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 24: Addressees

This Directive is addressed to the Member States.

5 DIRECTIVE 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 22 MAY 2001 ON THE HARMONISATION OF CERTAIN ASPECTS OF COPYRIGHT AND RELATED RIGHTS IN THE INFORMATION SOCIETY

....

CHAPTER I: OBJECTIVE AND SCOPE

Article 1: Scope

1. This Directive concerns the legal protection of copyright and related rights in the framework of the internal market, with particular emphasis on the information society.
2. Except in the cases referred to in Article 11, this Directive shall leave intact and shall in no way affect existing Community provisions relating to:
 - (a) the legal protection of computer programs;
 - (b) rental right, lending right and certain rights related to copyright in the field of intellectual property;
 - (c) copyright and related rights applicable to broadcasting of programmes by satellite and cable retransmission;
 - (d) the term of protection of copyright and certain related rights;
 - (e) the legal protection of databases.

CHAPTER II: RIGHTS AND EXCEPTIONS

Article 2: Reproduction right

Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

- (a) for authors, of their works;
- (b) for performers, of fixations of their performances;
- (c) for phonogram producers, of their phonograms;
- (d) for the producers of the first fixations of films, in respect of the original and copies of their films;
- (e) for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.

Article 3: Right of communication to the public of works and right of making available to the public other subject-matter

1. Member States shall provide authors with the exclusive right to authorise or prohibit 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.
2. Member States shall provide for the exclusive right to authorise or prohibit the making 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:
 - (a) for performers, of fixations of their performances;
 - (b) for phonogram producers, of their phonograms;

- (c) for the producers of the first fixations of films, of the original and copies of their films;
 - (d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.
3. The rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article.

Article 4: Distribution right

1. Member States shall provide for authors, in respect of the original of their works or of copies thereof, the exclusive right to authorise or prohibit any form of distribution to the public by sale or otherwise.
2. The distribution right shall not be exhausted within the Community in respect of the original or copies of the work, except where the first sale or other transfer of ownership in the Community of that object is made by the rightholder or with his consent.

Article 5: Exceptions and limitations

1. Temporary acts of reproduction referred to in Article 2, which are transient or incidental [and] an integral and essential part of a technological process and whose sole purpose is to enable:
 - (a) a transmission in a network between third parties by an intermediary, or
 - (b) a lawful use of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.
2. Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:
 - (a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;
 - (b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;
 - (c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage;
 - (d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;
 - (e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.
3. Member States may provide for exceptions or limitations to the rights provided for in

Articles 2 and 3 in the following cases:

- (a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved;
- (b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;
- (c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;
- (d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;
- (e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;
- (f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;
- (g) use during religious celebrations or official celebrations organised by a public authority;
- (h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;
- (i) incidental inclusion of a work or other subject-matter in other material;
- (j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;
- (k) use for the purpose of caricature, parody or pastiche;
- (l) use in connection with the demonstration or repair of equipment;
- (m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;
- (n) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections;
- (o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.

4. Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an

exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.

5. The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in 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 rightholder.

CHAPTER III: PROTECTION OF TECHNOLOGICAL MEASURES AND RIGHTS-MANAGEMENT INFORMATION

Article 6: Obligations as to technological measures

1. Member States shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.
2. Member States shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:
 - (a) are promoted, advertised or marketed for the purpose of circumvention of, or
 - (b) have only a limited commercially significant purpose or use other than to circumvent, or
 - (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, any effective technological measures.
3. For the purposes of this Directive, the expression "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the rightholder of any copyright or any right related to copyright as provided for by law or the sui generis right provided for in Chapter III of Directive 96/9/EC. Technological measures shall be deemed "effective" where the use of a protected work or other subject-matter is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.
4. Notwithstanding the legal protection provided for in paragraph 1, in the absence of voluntary measures taken by rightholders, including agreements between rightholders and other parties concerned, Member States shall take appropriate measures to ensure that rightholders make available to the beneficiary of an exception or limitation provided for in national law in accordance with Article 5(2)(a), (2)(c), (2)(d), (2)(e), (3)(a), (3)(b) or (3)(e) the means of benefiting from that exception or limitation, to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject-matter concerned.

A Member State may also take such measures in respect of a beneficiary of an exception or limitation provided for in accordance with Article 5(2)(b), unless

reproduction for private use has already been made possible by rightholders to the extent necessary to benefit from the exception or limitation concerned and in accordance with the provisions of Article 5(2)(b) and (5), without preventing rightholders from adopting adequate measures regarding the number of reproductions in accordance with these provisions.

The technological measures applied voluntarily by rightholders, including those applied in implementation of voluntary agreements, and technological measures applied in implementation of the measures taken by Member States, shall enjoy the legal protection provided for in paragraph 1.

The provisions of the first and second subparagraphs shall not apply to works or other subject-matter made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

When this Article is applied in the context of Directives 92/100/EEC and 96/9/EC, this paragraph shall apply *mutatis mutandis*.

Article 7: Obligations concerning rights-management information

1. Member States shall provide for adequate legal protection against any person knowingly performing without authority any of the following acts:
 - (a) the removal or alteration of any electronic rights-management information;
 - (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under this Directive or under Chapter III of Directive 96/9/EC from which electronic rights-management information has been removed or altered without authority, if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright as provided by law, or of the *sui generis* right provided for in Chapter III of Directive 96/9/EC.
2. For the purposes of this Directive, the expression "rights-management information" means any information provided by rightholders which identifies the work or other subject-matter referred to in this Directive or covered by the *sui generis* right provided for in Chapter III of Directive 96/9/EC, the author or any other rightholder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.
The first subparagraph shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subjectmatter referred to in this Directive or covered by the *sui generis* right provided for in Chapter III of Directive 96/9/EC.

CHAPTER IV: COMMON PROVISIONS

Article 8: Sanctions and remedies

1. Member States shall provide appropriate sanctions and remedies in respect of infringements of the rights and obligations set out in this Directive and shall take all the measures necessary to ensure that those sanctions and remedies are applied. The

sanctions thus provided for shall be effective, proportionate and dissuasive.

2. Each Member State shall take the measures necessary to ensure that rightholders whose interests are affected by an infringing activity carried out on its territory can bring an action for damages and/or apply for an injunction and, where appropriate, for the seizure of infringing material as well as of devices, products or components referred to in Article 6(2).
3. Member States shall ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right.

Article 9: Continued application of other legal provisions

This Directive shall be without prejudice to provisions concerning in particular patent rights, trade marks, design rights, utility models, topographies of semi-conductor products, type faces, conditional access, access to cable of broadcasting services, protection of national treasures, legal deposit requirements, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, the law of contract.

Article 10: Application over time

1. The provisions of this Directive shall apply in respect of all works and other subject-matter referred to in this Directive which are, on 22 December 2002, protected by the Member States' legislation in the field of copyright and related rights, or which meet the criteria for protection under the provisions of this Directive or the provisions referred to in Article 1(2).
2. This Directive shall apply without prejudice to any acts concluded and rights acquired before 22 December 2002.

Article 11: Technical adaptations

1. Directive 92/100/EEC is hereby amended as follows:
 - (a) Article 7 shall be deleted;
 - (b) Article 10(3) shall be replaced by the following: "3. The limitations shall only be applied in certain special cases which do not conflict with a normal exploitation of the subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder."
2. Article 3(2) of Directive 93/98/EEC shall be replaced by the following: "2. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, the said rights shall expire 50 years from the date of the first lawful publication. If no lawful publication has taken place within the period mentioned in the first sentence, and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire 50 years from the date of the first lawful communication to the public."

However, where through the expiry of the term of protection granted pursuant to this paragraph in its version before amendment by Directive 2001/29/EC of the European

Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society the rights of producers of phonograms are no longer protected on 22 December 2002, this paragraph shall not have the effect of protecting those rights anew."

Article 12: Final provisions

1. Not later than 22 December 2004 and every three years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, in which, inter alia, on the basis of specific information supplied by the Member States, it shall examine in particular the application of Articles 5, 6 and 8 in the light of the development of the digital market. In the case of Article 6, it shall examine in particular whether that Article confers a sufficient level of protection and whether acts which are permitted by law are being adversely affected by the use of effective technological measures. Where necessary, in particular to ensure the functioning of the internal market pursuant to Article 14 of the Treaty, it shall submit proposals for amendments to this Directive.
2. Protection of rights related to copyright under this Directive shall leave intact and shall in no way affect the protection of copyright.
3. A contact committee is hereby established. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and shall meet either on the initiative of the chairman or at the request of the delegation of a Member State.
4. The tasks of the committee shall be as follows:
 - (a) to examine the impact of this Directive on the functioning of the internal market, and to highlight any difficulties;
 - (b) to organise consultations on all questions deriving from the application of this Directive;
 - (c) to facilitate the exchange of information on relevant developments in legislation and case-law, as well as relevant economic, social, cultural and technological developments;
 - (d) to act as a forum for the assessment of the digital market in works and other items, including private copying and the use of technological measures.

Article 13: Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 22 December 2002. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive.

Article 14: Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 15: Addressees

This Directive is addressed to the Member States.

1 Purpose

This Uniform Domain Name Dispute Resolution Policy (the "Policy") has been adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), is incorporated by reference into your Registration Agreement, and sets forth the terms and conditions in connection with a dispute between you and any party other than us (the registrar) over the registration and use of an Internet domain name registered by you. Proceedings under Paragraph 4 of this Policy will be conducted according to the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules of Procedure"), which are available at www.icann.org/udrp/udrp-rules-24oct99.htm, and the selected administrative-dispute-resolution service provider's supplemental rules.

2 Your representations

By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that

- (a) the statements that you made in your Registration Agreement are complete and accurate;
- (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;
- (c) you are not registering the domain name for an unlawful purpose; and
- (d) you will not knowingly use the domain name in violation of any applicable laws or regulations.

It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights.

3 Cancellations, transfers, and changes

We will cancel, transfer or otherwise make changes to domain name registrations under the following circumstances:

- (a) subject to the provisions of Paragraph 8, our receipt of written or appropriate electronic instructions from you or your authorized agent to take such action;
- (b) our receipt of an order from a court or arbitral tribunal, in each case of competent jurisdiction, requiring such action; and/or
- (c) our receipt of a decision of an Administrative Panel requiring such action in any administrative proceeding to which you were a party and which was conducted under this Policy or a later version of this Policy adopted by ICANN (see paragraph 4(i) and (k) below).

We may also cancel, transfer or otherwise make changes to a domain name registration in accordance with the terms of your Registration Agreement or other legal requirements.

4 Mandatory administrative proceeding

This Paragraph sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding. These proceedings will be conducted before

one of the administrative-dispute-resolution service providers listed at www.icann.org/udrp/approved-providers.htm (each, a "Provider").

(a) Applicable disputes

You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

- (i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) you have no rights or legitimate interests in respect of the domain name; and
- (iii) your domain name has been registered and is being used in bad faith.

In the administrative proceeding, the complainant must prove that each of these three elements are present.

(b) Evidence of registration and use in bad faith

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

(c) How to demonstrate your rights to and legitimate interests in the domain name in responding to a complaint

When you receive a complaint, you should refer to Paragraph 5 of the Rules of Procedure in determining how your response should be prepared. Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

(d) Selection of provider

The complainant shall select the Provider from among those approved by ICANN by submitting the complaint to that Provider. The selected Provider will administer the proceeding, except in cases of consolidation as described in Paragraph 4(f).

(e) Initiation of proceeding and process and appointment of administrative panel

The Rules of Procedure state the process for initiating and conducting a proceeding and for appointing the panel that will decide the dispute (the "Administrative Panel").

(f) Consolidation

In the event of multiple disputes between you and a complainant, either you or the complainant may petition to consolidate the disputes before a single Administrative Panel. This petition shall be made to the first Administrative Panel appointed to hear a pending dispute between the parties. This Administrative Panel may consolidate before it any or all such disputes in its sole discretion, provided that the disputes being consolidated are governed by this Policy or a later version of this Policy adopted by ICANN.

(g) Fees

All fees charged by a Provider in connection with any dispute before an Administrative Panel pursuant to this Policy shall be paid by the complainant, except in cases where you elect to expand the Administrative Panel from one to three panelists as provided in Paragraph 5(b)(iv) of the Rules of Procedure, in which case all fees will be split evenly by you and the complainant.

(h) Our involvement in administrative proceedings

We do not, and will not, participate in the administration or conduct of any proceeding before an Administrative Panel. In addition, we will not be liable as a result of any decisions rendered by the Administrative Panel.

(i) Remedies

The remedies available to a complainant pursuant to any proceeding before an Administrative Panel shall be limited to requiring the cancellation of your domain name or the transfer of your domain name registration to the complainant.

(j) Notification and publication

The Provider shall notify us of any decision made by an Administrative Panel with respect to a domain name you have registered with us. All decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision.

(k) Availability of court proceedings

The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that you have commenced a lawsuit against the complainant in a jurisdiction to which the complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure. (In general, that jurisdiction is either the location of our principal office or of your address as shown in our Whois database. See Paragraphs 1 and 3(b)(xiii) of the Rules of Procedure for details.) If we receive such documentation within the ten (10) business day period, we will not implement the Administrative Panel's decision, and we will take no further action, until we receive

- (i) evidence satisfactory to us of a resolution between the parties;
- (ii) evidence satisfactory to us that your lawsuit has been dismissed or withdrawn; or
- (iii) a copy of an order from such court dismissing your lawsuit or ordering that you do not have the right to continue to use your domain name.

5 All other disputes and litigation

All other disputes between you and any party other than us regarding your domain name registration that are not brought pursuant to the mandatory administrative proceeding provisions of paragraph 4 shall be resolved between you and such other party through any court, arbitration or other proceeding that may be available.

6 Our involvement in disputes

We will not participate in any way in any dispute between you and any party other than us regarding the registration and use of your domain name. You shall not name us as a party or otherwise include us in any such proceeding. In the event that we are named as a party in any such proceeding, we reserve the right to raise any and all

defenses deemed appropriate, and to take any other action necessary to defend ourselves.

7 Maintaining the status quo

We will not cancel, transfer, activate, deactivate, or otherwise change the status of any domain name registration under this Policy except as provided in Paragraph 3 above.

8 Transfers during a dispute

(a) Transfers of a domain name to a new holder

You may not transfer your domain name registration to another holder (i) during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded; or (ii) during a pending court proceeding or arbitration commenced regarding your domain name unless the party to whom the domain name registration is being transferred agrees, in writing, to be bound by the decision of the court or arbitrator. We reserve the right to cancel any transfer of a domain name registration to another holder that is made in violation of this subparagraph.

(b) Changing registrars

You may not transfer your domain name registration to another registrar during a pending administrative proceeding brought pursuant to Paragraph 4 or for a period of fifteen (15) business days (as observed in the location of our principal place of business) after such proceeding is concluded. You may transfer administration of your domain name registration to another registrar during a pending court action or arbitration, provided that the domain name you have registered with us shall continue to be subject to the proceedings commenced against you in accordance with the terms of this Policy. In the event that you transfer a domain name registration to us during the pendency of a court action or arbitration, such dispute shall remain subject to the domain name dispute policy of the registrar from which the domain name registration was transferred.

9 Policy modifications

We reserve the right to modify this Policy at any time with the permission of ICANN. We will post our revised Policy at <URL> at least thirty (30) calendar days before it becomes effective. Unless this Policy has already been invoked by the submission of a complaint to a Provider, in which event the version of the Policy in effect at the time it was invoked will apply to you until the dispute is over, all such changes will be binding upon you with respect to any domain name registration dispute, whether the dispute arose before, on or after the effective date of our change. In the event that you object to a change in this Policy, your sole remedy is to cancel your domain name registration with us, provided that you will not be entitled to a refund of any fees you paid to us. The revised Policy will apply to you until you cancel your domain name registration.

7 RULES FOR UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (ICANN)

1 Definitions

In these Rules:

‘Complainant’ means the party initiating a complaint concerning a domain-name registration.

‘ICANN’ refers to the Internet Corporation for Assigned Names and Numbers.

‘Mutual Jurisdiction’ means a court jurisdiction at the location of either

- (a) the principal office of the Registrar (provided the domain-name holder has submitted in its Registration Agreement to that jurisdiction for court adjudication of disputes concerning or arising from the use of the domain name) or
- (b) the domain-name holder's address as shown for the registration of the domain name in Registrar's Whois database at the time the complaint is submitted to the Provider.

‘Panel’ means an administrative panel appointed by a Provider to decide a complaint concerning a domain-name registration.

‘Panelist’ means an individual appointed by a Provider to be a member of a Panel.

‘Party’ means a Complainant or a Respondent.

‘Policy’ means the Uniform Domain Name Dispute Resolution Policy that is incorporated by reference and made a part of the Registration Agreement.

‘Provider’ means a dispute-resolution service provider approved by ICANN. A list of such Providers appears at www.icann.org/udrp/approved-providers.htm.

‘Registrar’ means the entity with which the Respondent has registered a domain name that is the subject of a complaint.

‘Registration Agreement’ means the agreement between a Registrar and a domain-name holder.

‘Respondent’ means the holder of a domain-name registration against which a complaint is initiated.

‘Reverse Domain Name Hijacking’ means using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name.

‘Supplemental Rules’ means the rules adopted by the Provider administering a proceeding to supplement these Rules. Supplemental Rules shall not be inconsistent with the Policy or these Rules and shall cover such topics as fees, word and page limits and guidelines, the means for communicating with the Provider and the Panel, and the form of cover sheets.

2 Communications

- (a) When forwarding a complaint to the Respondent, it shall be the Provider's responsibility to employ reasonably available means calculated to achieve actual notice to Respondent. Achieving actual notice, or employing the following measures to do so, shall discharge this responsibility:
 - (i) sending the complaint to all postal-mail and facsimile addresses
 - (A) shown in the domain name's registration data in Registrar's Whois database for the registered domain-name holder, the technical contact, and the administrative contact and
 - (B) supplied by Registrar to the Provider for the registration's billing contact; and
 - (ii) sending the complaint in electronic form (including annexes to the extent available in that form) by e-mail to:
 - (A) the e-mail addresses for those technical, administrative, and billing contacts;
 - (B) postmaster@<the contested domain name>; and
 - (C) if the domain name (or "www." followed by the domain name) resolves to an active web page (other than a generic page the Provider concludes is maintained by a registrar or ISP for parking domain-names registered by multiple domain-name holders), any e-mail address shown or e-mail links on that web page; and
 - (iii) sending the complaint to any address the Respondent has notified the Provider it prefers and, to the extent practicable, to all other addresses provided to the Provider by Complainant under paragraph 3(b)(v).
- (b) Except as provided in paragraph 2(a), any written communication to Complainant or Respondent provided for under these Rules shall be made by the preferred means stated by the Complainant or Respondent, respectively (see paragraphs 3(b)(iii) and 5(b)(iii)), or in the absence of such specification
 - (i) by telecopy or facsimile transmission, with a confirmation of transmission; or
 - (ii) by postal or courier service, postage pre-paid and return receipt requested; or
 - (iii) electronically via the Internet, provided a record of its transmission is available.
- (c) Any communication to the Provider or the Panel shall be made by the means and in the manner (including number of copies) stated in the Provider's Supplemental Rules.
- (d) Communications shall be made in the language prescribed in paragraph 11. E-mail communications should, if practicable, be sent in plaintext.
- (e) Either Party may update its contact details by notifying the Provider and the Registrar.
- (f) Except as otherwise provided in these Rules, or decided by a Panel, all communications provided for under these Rules shall be deemed to have been made:

- (i) if delivered by telecopy or facsimile transmission, on the date shown on the confirmation of transmission; or
 - (ii) if by postal or courier service, on the date marked on the receipt; or
 - (iii) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable.
- (g) Except as otherwise provided in these Rules, all time periods calculated under these Rules to begin when a communication is made shall begin to run on the earliest date that the communication is deemed to have been made in accordance with paragraph 2(f).
- (h) Any communication by
 - (i) a Panel to any Party shall be copied to the Provider and to the other Party;
 - (ii) the Provider to any Party shall be copied to the other Party; and
 - (iii) a Party shall be copied to the other Party, the Panel and the Provider, as the case may be.
- (i) It shall be the responsibility of the sender to retain records of the fact and circumstances of sending, which shall be available for inspection by affected parties and for reporting purposes.
- (j) In the event a Party sending a communication receives notification of non-delivery of the communication, the Party shall promptly notify the Panel (or, if no Panel is yet appointed, the Provider) of the circumstances of the notification. Further proceedings concerning the communication and any response shall be as directed by the Panel (or the Provider).

3 The complaint

- (a) Any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules to any Provider approved by ICANN. (Due to capacity constraints or for other reasons, a Provider's ability to accept complaints may be suspended at times. In that event, the Provider shall refuse the submission. The person or entity may submit the complaint to another Provider.)
- (b) The complaint shall be submitted in hard copy and (except to the extent not available for annexes) in electronic form and shall:
 - (i) Request that the complaint be submitted for decision in accordance with the Policy and these Rules;
 - (ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Complainant and of any representative authorized to act for the Complainant in the administrative proceeding;
 - (iii) Specify a preferred method for communications directed to the Complainant in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy;
 - (iv) Designate whether Complainant elects to have the dispute decided by a single-member or a three-member Panel and, in the event

Complainant elects a three-member Panel, provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any ICANN-approved Provider's list of panelists);

- (v) Provide the name of the Respondent (domain-name holder) and all information (including any postal and e-mail addresses and telephone and telefax numbers) known to Complainant regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the Provider to send the complaint as described in paragraph 2(a);
- (vi) Specify the domain name(s) that is/are the subject of the complaint;
- (vii) Identify the Registrar(s) with whom the domain name(s) is/are registered at the time the complaint is filed;
- (viii) Specify the trademark(s) or service mark(s) on which the complaint is based and, for each mark, describe the goods or services, if any, with which the mark is used (Complainant may also separately describe other goods and services with which it intends, at the time the complaint is submitted, to use the mark in the future.);
- (ix) Describe, in accordance with the Policy, the grounds on which the complaint is made including, in particular,
 - (1) the manner in which the domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
 - (2) why the Respondent (domain-name holder) should be considered as having no rights or legitimate interests in respect of the domain name(s) that is/are the subject of the complaint; and
 - (3) why the domain name(s) should be considered as having been registered and being used in bad faith
 (The description should, for elements (2) and (3), discuss any aspects of paragraphs 4(b) and 4(c) of the Policy that are applicable. The description shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);
- (x) Specify, in accordance with the Policy, the remedies sought;
- (xi) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;
- (xii) State that a copy of the complaint, together with the cover sheet as prescribed by the Provider's Supplemental Rules, has been sent or transmitted to the Respondent (domain-name holder), in accordance with paragraph 2(b);
- (xiii) State that Complainant will submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction;
- (xiv) Conclude with the following statement followed by the signature of the Complainant or its authorized representative:

"Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain-name

holder and waives all such claims and remedies against (a) the dispute-resolution provider and panelists, except in the case of deliberate wrongdoing, (b) the registrar, (c) the registry administrator, and (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents."

"Complainant certifies that the information contained in this Complaint is to the best of Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."; and

- (xv) Annex any documentary or other evidence, including a copy of the Policy applicable to the domain name(s) in dispute and any trademark or service mark registration upon which the complaint relies, together with a schedule indexing such evidence.
- (c) The complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.

4 Notification of complaint

- (a) The Provider shall review the complaint for administrative compliance with the Policy and these Rules and, if in compliance, shall forward the complaint (together with the explanatory cover sheet prescribed by the Provider's Supplemental Rules) to the Respondent, in the manner prescribed by paragraph 2(a), within three (3) calendar days following receipt of the fees to be paid by the Complainant in accordance with paragraph 19.
- (b) If the Provider finds the complaint to be administratively deficient, it shall promptly notify the Complainant and the Respondent of the nature of the deficiencies identified. The Complainant shall have five (5) calendar days within which to correct any such deficiencies, after which the administrative proceeding will be deemed withdrawn without prejudice to submission of a different complaint by Complainant.
- (c) The date of commencement of the administrative proceeding shall be the date on which the Provider completes its responsibilities under paragraph 2(a) in connection with forwarding the Complaint to the Respondent.
- (d) The Provider shall immediately notify the Complainant, the Respondent, the concerned Registrar(s), and ICANN of the date of commencement of the administrative proceeding.

5 The response

- (a) Within twenty (20) days of the date of commencement of the administrative proceeding the Respondent shall submit a response to the Provider.

- (b) The response shall be submitted in hard copy and (except to the extent not available for annexes) in electronic form and shall:
- (i) Respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain-name holder) to retain registration and use of the disputed domain name (This portion of the response shall comply with any word or page limit set forth in the Provider's Supplemental Rules.);
 - (ii) Provide the name, postal and e-mail addresses, and the telephone and telefax numbers of the Respondent (domain-name holder) and of any representative authorized to act for the Respondent in the administrative proceeding;
 - (iii) Specify a preferred method for communications directed to the Respondent in the administrative proceeding (including person to be contacted, medium, and address information) for each of (A) electronic-only material and (B) material including hard copy;
 - (iv) If Complainant has elected a single-member panel in the Complaint (see paragraph 3(b)(iv)), state whether Respondent elects instead to have the dispute decided by a three-member panel;
 - (v) If either Complainant or Respondent elects a three-member Panel, provide the names and contact details of three candidates to serve as one of the Panelists (these candidates may be drawn from any ICANN-approved Provider's list of panelists);
 - (vi) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that are the subject of the complaint;
 - (vii) State that a copy of the response has been sent or transmitted to the Complainant, in accordance with paragraph 2(b); and
 - (viii) Conclude with the following statement followed by the signature of the Respondent or its authorized representative:
"Respondent certifies that the information contained in this Response is to the best of Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument."; and
 - (ix) Annex any documentary or other evidence upon which the Respondent relies, together with a schedule indexing such documents.
- (c) If Complainant has elected to have the dispute decided by a single-member Panel and Respondent elects a three-member Panel, Respondent shall be required to pay one-half of the applicable fee for a three-member Panel as set forth in the Provider's Supplemental Rules. This payment shall be made together with the submission of the response to the Provider. In the event that the required payment is not made, the dispute shall be decided by a single-member Panel.
- (d) At the request of the Respondent, the Provider may, in exceptional cases, extend the period of time for the filing of the response. The period may also be extended by written stipulation between the Parties, provided the stipulation is

approved by the Provider.

- (e) If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.

6 Appointment of the panel and timing of decision

- (a) Each Provider shall maintain and publish a publicly available list of panelists and their qualifications.
- (b) If neither the Complainant nor the Respondent has elected a three-member Panel (paragraphs 3(b)(iv) and 5(b)(iv)), the Provider shall appoint, within five (5) calendar days following receipt of the response by the Provider, or the lapse of the time period for the submission thereof, a single Panelist from its list of panelists. The fees for a single-member Panel shall be paid entirely by the Complainant.
- (c) If either the Complainant or the Respondent elects to have the dispute decided by a three-member Panel, the Provider shall appoint three Panelists in accordance with the procedures identified in paragraph 6(e). The fees for a three-member Panel shall be paid in their entirety by the Complainant, except where the election for a three-member Panel was made by the Respondent, in which case the applicable fees shall be shared equally between the Parties.
- (d) Unless it has already elected a three-member Panel, the Complainant shall submit to the Provider, within five (5) calendar days of communication of a response in which the Respondent elects a three-member Panel, the names and contact details of three candidates to serve as one of the Panelists. These candidates may be drawn from any ICANN-approved Provider's list of panelists.
- (e) In the event that either the Complainant or the Respondent elects a three-member Panel, the Provider shall endeavor to appoint one Panelist from the list of candidates provided by each of the Complainant and the Respondent. In the event the Provider is unable within five (5) calendar days to secure the appointment of a Panelist on its customary terms from either Party's list of candidates, the Provider shall make that appointment from its list of panelists. The third Panelist shall be appointed by the Provider from a list of five candidates submitted by the Provider to the Parties, the Provider's selection from among the five being made in a manner that reasonably balances the preferences of both Parties, as they may specify to the Provider within five (5) calendar days of the Provider's submission of the five-candidate list to the Parties.
- (f) Once the entire Panel is appointed, the Provider shall notify the Parties of the Panelists appointed and the date by which, absent exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider.

7 Impartiality and independence

A Panelist shall be impartial and independent and shall have, before accepting appointment, disclosed to the Provider any circumstances giving rise to justifiable

doubt as to the Panelist's impartiality or independence. If, at any stage during the administrative proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Panelist, that Panelist shall promptly disclose such circumstances to the Provider. In such event, the Provider shall have the discretion to appoint a substitute Panelist.

8 Communication between parties and the panel

No Party or anyone acting on its behalf may have any unilateral communication with the Panel. All communications between a Party and the Panel or the Provider shall be made to a case administrator appointed by the Provider in the manner prescribed in the Provider's Supplemental Rules.

9 Transmission of the file to the panel

The Provider shall forward the file to the Panel as soon as the Panelist is appointed in the case of a Panel consisting of a single member, or as soon as the last Panelist is appointed in the case of a three-member Panel.

10 General powers of the panel

- (a) The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.
- (b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.
- (c) The Panel shall ensure that the administrative proceeding takes place with due expedition. It may, at the request of a Party or on its own motion, extend, in exceptional cases, a period of time fixed by these Rules or by the Panel.
- (d) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.
- (e) A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.

11 Language of proceedings

- (a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.
- (b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.

12 Further statements

In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties.

13 In-person hearings

There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference), unless the Panel determines, in its sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the complaint.

14 Default

- (a) In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the Panel shall proceed to a decision on the complaint.
- (b) If a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

15 Panel decisions

- (a) A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.
- (b) In the absence of exceptional circumstances, the Panel shall forward its decision on the complaint to the Provider within fourteen (14) days of its appointment pursuant to paragraph 6.
- (c) In the case of a three-member Panel, the Panel's decision shall be made by a majority.
- (d) The Panel's decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name(s) of the Panelist(s).
- (e) Panel decisions and dissenting opinions shall normally comply with the guidelines as to length set forth in the Provider's Supplemental Rules. Any dissenting opinion shall accompany the majority decision. If the Panel concludes that the dispute is not within the scope of paragraph 4(a) of the Policy, it shall so state. If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

16 Communication of decision to parties

- (a) Within three (3) calendar days after receiving the decision from the Panel, the Provider shall communicate the full text of the decision to each Party, the concerned Registrar(s), and ICANN. The concerned Registrar(s) shall immediately communicate to each Party, the Provider, and ICANN the date for the implementation of the decision in accordance with the Policy.
- (b) Except if the Panel determines otherwise (see paragraph 4(j) of the Policy), the Provider shall publish the full decision and the date of its implementation on a publicly accessible web site. In any event, the portion of any decision determining a complaint to have been brought in bad faith (see paragraph 15(e) of these Rules) shall be published.

17 Settlement or other grounds for termination

- (a) If, before the Panel's decision, the Parties agree on a settlement, the Panel shall terminate the administrative proceeding.
- (b) If, before the Panel's decision is made, it becomes unnecessary or impossible to continue the administrative proceeding for any reason, the Panel shall terminate the administrative proceeding, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Panel.

18 Effect of court proceedings

- (a) In the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.
- (b) In the event that a Party initiates any legal proceedings during the pendency of an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, it shall promptly notify the Panel and the Provider. See paragraph 8 above.

19 Fees

- (a) The Complainant shall pay to the Provider an initial fixed fee, in accordance with the Provider's Supplemental Rules, within the time and in the amount required. A Respondent electing under paragraph 5(b)(iv) to have the dispute decided by a three-member Panel, rather than the single-member Panel elected by the Complainant, shall pay the Provider one-half the fixed fee for a three-member Panel. See paragraph 5(c). In all other cases, the Complainant shall bear all of the Provider's fees, except as prescribed under paragraph 19(d). Upon appointment of the Panel, the Provider shall refund the appropriate portion, if any, of the initial fee to the Complainant, as specified in the Provider's Supplemental Rules.
- (b) No action shall be taken by the Provider on a complaint until it has received from Complainant the initial fee in accordance with paragraph 19(a).
- (c) If the Provider has not received the fee within ten (10) calendar days of receiving

the complaint, the complaint shall be deemed withdrawn and the administrative proceeding terminated.

- (d) In exceptional circumstances, for example in the event an in-person hearing is held, the Provider shall request the Parties for the payment of additional fees, which shall be established in agreement with the Parties and the Panel.

20 Exclusion of liability

Except in the case of deliberate wrongdoing, neither the Provider nor a Panelist shall be liable to a Party for any act or omission in connection with any administrative proceeding under these Rules.

21 Amendments

The version of these Rules in effect at the time of the submission of the complaint to the Provider shall apply to the administrative proceeding commenced thereby. These Rules may not be amended without the express written approval of ICANN.

[adopted by the Special Commission of the Hague Conference on 30 October 1999]

CHAPTER I: SCOPE OF THE CONVENTION

1 Substantive scope

- (1) The Convention applies to civil and commercial matters. It shall not extend in particular to revenue, customs or administrative matters.
- (2) The Convention does not apply to —
 - (a) the status and legal capacity of natural persons;
 - (b) maintenance obligations;
 - (c) matrimonial property regimes and other rights and obligations arising out of marriage or similar relationships;
 - (d) wills and succession;
 - (e) insolvency, composition or analogous proceedings;
 - (f) social security;
 - (g) arbitration and proceedings related thereto;
 - (h) admiralty or maritime matters.
- (3) A dispute is not excluded from the scope of the Convention by the mere fact that a government, a governmental agency or any other person acting for the State is a party thereto.
- (4) Nothing in this Convention affects the privileges and immunities of sovereign States or of entities of sovereign States, or of international organizations.

2 Territorial scope

- (1) The provisions of Chapter II shall apply in the courts of a Contracting State unless all the parties are habitually resident in that State. However, even if all the parties are habitually resident in that State —
 - (a) Article 4 shall apply if they have agreed that a court or courts of another Contracting State have jurisdiction to determine the dispute;
 - (b) Article 12, regarding exclusive jurisdiction, shall apply;
 - (c) Articles 21 and 22 shall apply where the court is required to determine whether to decline jurisdiction or suspend its proceedings on the grounds that the dispute ought to be determined in the courts of another Contracting State.
- (2) The provisions of Chapter III apply to the recognition and enforcement in a Contracting State of a judgment rendered in another Contracting State.

CHAPTER II: JURISDICTION

3 Defendant's forum

- (1) Subject to the provisions of the Convention, a defendant may be sued in the courts of the State where that defendant is habitually resident.
- (2) For the purposes of the Convention, an entity or person other than a natural person shall be considered to be habitually resident in the State —
 - (a) where it has its statutory seat,
 - (b) under whose law it was incorporated or formed,
 - (c) where it has its central administration, or
 - (d) where it has its principal place of business.

4 Choice of court

- (1) If the parties have agreed that a court or courts of a Contracting State shall have jurisdiction to settle any dispute which has arisen or may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, and that jurisdiction shall be exclusive unless the parties have agreed otherwise. Where an agreement having exclusive effect designates a court or courts of a non-Contracting State, courts in Contracting States shall decline jurisdiction or suspend proceedings unless the court or courts chosen have themselves declined jurisdiction.
- (2) An agreement within the meaning of paragraph 1 shall be valid as to form, if it was entered into or confirmed —
 - (a) in writing;
 - (b) by any other means of communication which renders information accessible so as to be usable for subsequent reference;
 - (c) in accordance with a usage which is regularly observed by the parties;
 - (d) in accordance with a usage of which the parties were or ought to have been aware and which is regularly observed by parties to contracts of the same nature in the particular trade or commerce concerned.
- (3) Agreements conferring jurisdiction and similar clauses in trust instruments shall be without effect if they conflict with the provisions of Article 7, 8 or 12.

5 Appearance by the defendant

- (1) Subject to Article 12, a court has jurisdiction if the defendant proceeds on the merits without contesting jurisdiction.
- (2) The defendant has the right to contest jurisdiction no later than at the time of the first defence on the merits.

...

10 Torts or delicts

- (1) A plaintiff may bring an action in tort or delict in the courts of the State —
 - (a) in which the act or omission that caused injury occurred, or
 - (b) in which the injury arose, unless the defendant establishes that the

person claimed to be responsible could not reasonably have foreseen that the act or omission could result in an injury of the same nature in that State.

- (2) Paragraph 1(b) shall not apply to injury caused by anti-trust violations, in particular price-fixing or monopolisation, or conspiracy to inflict economic loss.
- (3) A plaintiff may also bring an action in accordance with paragraph 1 when the act or omission, or the injury may occur.
- (4) If an action is brought in the courts of a State only on the basis that the injury arose or may occur there, those courts shall have jurisdiction only in respect of the injury that occurred or may occur in that State, unless the injured person has his or her habitual residence in that State.

...

12 Exclusive jurisdiction

- (1) In proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Contracting State in which the property is situated have exclusive jurisdiction, unless in proceedings which have as their object tenancies of immovable property, the tenant is habitually resident in a different State.
- (2) In proceedings which have as their object the validity, nullity, or dissolution of a legal person, or the validity or nullity of the decisions of its organs, the courts of a Contracting State whose law governs the legal person have exclusive jurisdiction.
- (3) In proceedings which have as their object the validity or nullity of entries in public registers, the courts of the Contracting State in which the register is kept have exclusive jurisdiction.
- (4) In proceedings which have as their object the registration, validity, [or] nullity[, or revocation or infringement,] of patents, trade marks, designs or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or, under the terms of an international convention, is deemed to have taken place, have exclusive jurisdiction. This shall not apply to copyright or any neighbouring rights, even though registration or deposit of such rights is possible.
- [(5) In relation to proceedings which have as their object the infringement of patents, the preceding paragraph does not exclude the jurisdiction of any other court under the Convention or under the national law of a Contracting State.]
- [(6) The previous paragraphs shall not apply when the matters referred to therein arise as incidental questions.]

13 Provisional and protective measures

- (1) A court having jurisdiction under Articles 3 to 12 to determine the merits of the

case has jurisdiction to order any provisional or protective measures.

- (2) The courts of a State in which property is located have jurisdiction to order any provisional or protective measures in respect of that property.
- (3) A court of a Contracting State not having jurisdiction under paragraphs 1 or 2 may order provisional or protective measures, provided that —
 - (a) their enforcement is limited to the territory of that State, and
 - (b) their purpose is to protect on an interim basis a claim on the merits which is pending or to be brought by the requesting party.

14 Multiple defendants

- (1) A plaintiff bringing an action against a defendant in a court of the State in which that defendant is habitually resident may also proceed in that court against other defendants not habitually resident in that State if —
 - (a) the claims against the defendant habitually resident in that State and the other defendants are so closely connected that they should be adjudicated together to avoid a serious risk of inconsistent judgments, and
 - (b) as to each defendant not habitually resident in that State, there is a substantial connection between that State and the dispute involving that defendant.
- (2) Paragraph 1 shall not apply to a codefendant invoking an exclusive choice of court clause agreed with the plaintiff and conforming with Article 4.

15 Counter-claims

A court which has jurisdiction to determine a claim under the provisions of the Convention shall also have jurisdiction to determine a counter-claim arising out of the transaction or occurrence on which the original claim is based.

...

17 Jurisdiction based on national law

Subject to Articles 4, 5, 7, 8, 12 and 13, the Convention does not prevent the application by Contracting States of rules of jurisdiction under national law, provided that this is not prohibited under Article 18.

18 Prohibited grounds of jurisdiction

- (1) Where the defendant is habitually resident in a Contracting State, the application of a rule of jurisdiction provided for under the national law of a Contracting State is prohibited if there is no substantial connection between that State and the dispute.
- (2) In particular, jurisdiction shall not be exercised by the courts of a Contracting State on the basis solely of one or more of the following —
 - (a) the presence or the seizure in that State of property belonging to the defendant, except where the dispute is directly related to that

- property;
- (b) the nationality of the plaintiff;
- (c) the nationality of the defendant;
- (d) the domicile, habitual or temporary residence, or presence of the plaintiff in that State;
- (e) the carrying on of commercial or other activities by the defendant in that State, except where the dispute is directly related to those activities;
- (f) the service of a writ upon the defendant in that State;
- (g) the unilateral designation of the forum by the plaintiff;
- (h) proceedings in that State for declaration of enforceability or registration or for the enforcement of a judgment, except where the dispute is directly related to such proceedings;
- (i) the temporary residence or presence of the defendant in that State;
- (j) the signing in that State of the contract from which the dispute arises.

...

19 Authority of the court seized

Where the defendant does not enter an appearance, the court shall verify whether Article 18 prohibits it from exercising jurisdiction if —

- (a) national law so requires; or
 - (b) the plaintiff so requests; or
 - [(c) the defendant so requests, even after judgment is entered in accordance with procedures established under national law; or]
 - [(d) the document which instituted the proceedings or an equivalent document was served on the defendant in another Contracting State.]
- or
- [(d) it appears from the documents filed by the plaintiff that the defendant's address is in another Contracting State.]

- 20** (1) The court shall stay the proceedings so long as it is not established that the document which instituted the proceedings or an equivalent document, including the essential elements of the claim, was notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence, or that all necessary steps have been taken to that effect.
- [(2) Paragraph 1 shall not affect the use of international instruments concerning the service abroad of judicial and extrajudicial documents in civil or commercial matters, in accordance with the law of the forum.]
- [(3) Paragraph 1 shall not apply, in case of urgency, to any provisional or protective measures.]

21 Lis pendens

- (1) When the same parties are engaged in proceedings in courts of different Contracting States and when such proceedings are based on the same causes of action, irrespective of the relief sought, the court second seized shall suspend the proceedings if the court first seized has jurisdiction and is expected to render

a judgment capable of being recognised under the Convention in the State of the court second seized, unless the latter has exclusive jurisdiction under Article 4 or 12.

- (2) The court second seized shall decline jurisdiction as soon as it is presented with a judgment rendered by the court first seized that complies with the requirements for recognition or enforcement under the Convention.
- (3) Upon application of a party, the court second seized may proceed with the case if the plaintiff in the court first seized has failed to take the necessary steps to bring the proceedings to a decision on the merits or if that court has not rendered such a decision within a reasonable time.
- (4) The provisions of the preceding paragraphs apply to the court second seized even in a case where the jurisdiction of that court is based on the national law of that State in accordance with Article 17.
- (5) For the purpose of this Article, a court shall be deemed to be seized —
 - (a) when the document instituting the proceedings or an equivalent document is lodged with the court, or
 - (b) if such document has to be served before being lodged with the court, when it is received by the authority responsible for service or served on the defendant.
- (6) If in the action before the court first seized the plaintiff seeks a determination that it has no obligation to the defendant, and if an action seeking substantive relief is brought in the court second seized —
 - (a) the provisions of paragraphs 1 to 5 above shall not apply to the court second seized, and
 - (b) the court first seized shall suspend the proceedings at the request of a party if the court second seized is expected to render a decision capable of being recognised under the Convention.
- (7) This Article shall not apply if the court first seized, on application by a party, determines that the court second seized is clearly more appropriate to resolve the dispute, under the conditions specified in Article 22.

22 Exceptional circumstances for declining jurisdiction

- (1) In exceptional circumstances, when the jurisdiction of the court seized is not founded on an exclusive choice of court agreement valid under Article 4, or on Article 7, 8 or 12, the court may, on application by a party, suspend its proceedings if in that case it is clearly inappropriate for that court to exercise jurisdiction and if a court of another State has jurisdiction and is clearly more appropriate to resolve the dispute. Such application must be made no later than at the time of the first defence on the merits.
- (2) The court shall take into account, in particular —
 - (a) any inconvenience to the parties in view of their habitual residence;
 - (b) the nature and location of the evidence, including documents and witnesses, and the procedures for obtaining such evidence;

- (c) applicable limitation or prescription periods;
 - (d) the possibility of obtaining recognition and enforcement of any decision on the merits.
- (3) In deciding whether to suspend the proceedings, a court shall not discriminate on the basis of the nationality or habitual residence of the parties.
- (4) If the court decides to suspend its proceedings under paragraph 1, it may order the defendant to provide security sufficient to satisfy any decision of the other court on the merits. However, it shall make such an order if the other court has jurisdiction only under Article 17, unless the defendant establishes that sufficient assets exist in the State of that other court or in another State where the court's decision could be enforced.
- (5) When the court has suspended its proceedings under paragraph 1,
- (a) it shall decline to exercise jurisdiction if the court of the other State exercises jurisdiction, or if the plaintiff does not bring the proceedings in that State within the time specified by the court, or
 - (b) it shall proceed with the case if the court of the other State decides not to exercise jurisdiction.

CHAPTER III: RECOGNITION AND ENFORCEMENT

23 Definition of "judgment"

For the purposes of this Chapter, "judgment" means —

- (a) any decision given by a court, whatever it may be called, including a decree or order, as well as the determination of costs or expenses by an officer of the court, provided that it relates to a decision which may be recognized or enforced under the Convention;
- (b) decisions ordering provisional or protective measures in accordance with Article 13, paragraph 1.

24 Judgments excluded from Chapter III

This Chapter shall not apply to judgments based on a ground of jurisdiction provided for by national law in accordance with Article 17.

25 Judgments to be recognized or enforced

- (1) A judgment based on a ground of jurisdiction provided for in Articles 3 to 13, or which is consistent with any such ground, shall be recognized or enforced under this Chapter.
- (2) In order to be recognized, a judgment referred to in paragraph 1 must have the effect of *res judicata* in the State of origin.
- (3) In order to be enforceable, a judgment referred to in paragraph 1 must be enforceable in the State of origin.
- (4) However, recognition or enforcement may be postponed if the judgment is the

subject of review in the State of origin or if the time limit for seeking a review has not expired.

26 Judgments not to be recognized or enforced

A judgment based on a ground of jurisdiction which conflicts with Articles 4, 5, 7, 8 or 12, or whose application is prohibited by virtue of Article 18, shall not be recognized or enforced.

27 Verification of jurisdiction

- (1) The court addressed shall verify the jurisdiction of the court of origin.
- (2) In verifying the jurisdiction of the court of origin, the court addressed shall be bound by the findings of fact on which the court of origin based its jurisdiction, unless the judgment was given by default.
- (3) Recognition or enforcement of a judgment may not be refused on the ground that the court addressed considers that the court of origin should have declined jurisdiction in accordance with Article 22.

28 Grounds for refusal of recognition or enforcement

- (1) Recognition or enforcement of a judgment may be refused if —
 - (a) proceedings between the same parties and having the same subject matter are pending before a court of the State addressed, if first seized in accordance with Article 21;
 - (b) the judgment is inconsistent with a judgment rendered, either in the State addressed or in another State, provided that in the latter case the judgment is capable of being recognized or enforced in the State addressed;
 - (c) the judgment results from proceedings incompatible with fundamental principles of procedure of the State addressed, including the right of each party to be heard by an impartial and independent court;
 - (d) the document which instituted the proceedings or an equivalent document, including the essential elements of the claim, was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence;
 - (e) the judgment was obtained by fraud in connection with a matter of procedure;
 - (f) recognition or enforcement would be manifestly incompatible with the public policy of the State addressed.
- (2) Without prejudice to such review as is necessary for the purpose of application of the provisions of this Chapter, there shall be no review of the merits of the judgment rendered by the court of origin.

...

30 Procedure

The procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment, are governed by the law of the State addressed so far as the Convention does not provide otherwise. The court addressed shall act expeditiously.

...

33 Damages

- (1) In so far as a judgment awards non-compensatory, including exemplary or punitive, damages, it shall be recognized at least to the extent that similar or comparable damages could have been awarded in the State addressed.
- (2)
 - (a) Where the debtor, after proceedings in which the creditor has the opportunity to be heard, satisfies the court addressed that in the circumstances, including those existing in the State of origin, grossly excessive damages have been awarded, recognition may be limited to a lesser amount.
 - (b) In no event shall the court addressed recognize the judgment in an amount less than that which could have been awarded in the State addressed in the same circumstances, including those existing in the State of origin.
- (3) In applying paragraph 1 or 2, the court addressed shall take into account whether and to what extent the damages awarded by the court of origin serve to cover costs and expenses relating to the proceedings.

34 Severability

If the judgment contains elements which are severable, one or more of them may be separately recognized, declared enforceable, registered for enforcement, or enforced.

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