

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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Group of Negotiations on Goods (GATT)

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

PROPOSAL BY THE NORDIC COUNTRIES FOR THE NEGOTIATIONS ON
STANDARDS AND PRINCIPLES FOR TRADE-RELATED ASPECTS OF
INTELLECTUAL PROPERTY RIGHTS

The following communication has been received from the delegation of Norway, with the request that it be circulated to members of the Negotiating Group.

In their communication of 20 October 1988 (MTN.GNG/NG11/W/29) the Nordic countries presented some initial views and suggestions with regard to the issue of standards and principles for trade-related intellectual property rights.

The following proposal is a further elaboration of those views. It contains proposals on standards and principles for intellectual property rights - patents, trademarks, industrial design, copyright, neighbouring rights, layout designs, and trade and business secrets. The text of the proposal has, where feasible, been drawn from existing conventions and/or practices in this area.

Negotiations on standards and principles should, in the Nordic countries' view, aim at specifying levels of protection necessary to minimize trade problems in this field, without requiring harmonization of participants' legislation on intellectual property rights.

STANDARDS AND PRINCIPLES FOR TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

1. PATENTS

1.1 Subject matter for protection

Patents shall be available for inventions in all fields of technology, except for:

- inventions the publication or exploitation of which would be contrary to "ordre public" or morality;
- plant or animal varieties or essentially biological processes for the production of plants or animals; this provision does not apply to microbiological processes or the products thereof;
- human beings.

As regards biotechnological inventions, further limitations should be allowed under national law.

1.2 Patentability

Patents shall be granted for inventions which are susceptible of industrial application, which are new and which involve an inventive step.

1.3 Rights conferred

The exclusive right conferred by a patent shall imply that no one but the owner of the patent may, without his consent, exploit the invention by:

- producing, offering, putting on the market or using a product protected by the patent, or by importing or possessing the product for such purposes;
- using or offering to use a process protected by the patent or, while knowing or if it is obvious under the circumstances that the use of the process is prohibited without the consent of the owner of the patent, offering the process for use;
- offering, putting on the market or using a product made by a process protected by the patent, or importing or possessing the product for such purposes.

The exclusive right shall not include:

- exploitation for non-commercial purposes;
- exploitation by experiment relating to the subject matter of the invention;
- preparation in a pharmacy in individual cases of a medicine in accordance with a prescription, or acts carried out with a medicine so prepared.

1.4 Term of protection

The term of patent shall be 20 years from the date of filing of the patent application.

1.5 Compulsory licences

The granting of compulsory licences for lack or insufficiency of exploitation, compulsory licences in respect of dependent patents, official licences, and any right to use patented inventions in the public interest shall, in particular in respect of compensation, be subject to review by a court of law.

2. TRADEMARKS

2.1 Subject matter for protection

A trademark may consist of any sign, word, design, letter, number, shapes of goods or of their packaging, or any combination thereof, capable of distinguishing the goods of one undertaking from those of other undertakings.

The term "trademark" shall include service marks and collective marks.

2.2 Acquisition of protection

Protection of a trademark may be acquired by registration or by use. A system for the registration of trademarks shall be maintained. Use of a trademark prior to registration shall not be a condition for registration.

2.3 Rights conferred

The owner of a protected trademark shall have the right to prevent third parties not having his consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those for which the trademark is registered where such use would result in a likelihood of confusion.

Such protection shall be extended to prevent third parties from using, without due cause, a trademark which has a reputation in a way which takes advantage of or is detrimental to that reputation, even where the goods or services for which the trademark is registered are not identical or similar.

2.4 Term of registration and renewal

The term of registration shall be no less than ten years and shall be renewable indefinitely for further terms of no less than ten years.

2.5 Use of trademarks

If use of a registered mark is required, the registration may be cancelled only after an uninterrupted period of at least five years of non-use, unless legitimate reasons for non-use exist. Circumstances

arising independently of the will of the owner of a trademark which constitute a serious obstacle to the use of the mark, such as e.g. import restrictions on products protected by the trademark, are sufficient to constitute legitimate reasons for non-use.

2.6 Compulsory licences

Compulsory licensing of a trademark shall not be permitted.

3. INDUSTRIAL DESIGNS

3.1 Subject matter for protection

An industrial design is the model for the appearance of an article or an ornament.

3.2 Acquisition of protection

Industrial designs which are novel or original shall be protected.

Protection of an industrial design may be acquired by registration. In such a case, a system for the registration of industrial designs should be maintained.

3.3 Rights conferred

The owner of a protected industrial design shall have the right to prevent third parties not having his consent from exploiting the design in the course of trade by producing, importing, offering, assigning or hiring out articles the appearance of which does not differ substantially from that of the protected design.

3.4 Term of protection and renewal

The term of registration shall be five years from the date of application with a possibility of renewal for two consecutive periods of five years each.

4. COPYRIGHT

4.1 Subject matter for protection

An author of literary or artistic works, a work being an original intellectual creation or an expression thereof, shall enjoy copyright protection.

The expression "literary and artistic work" shall include every production in the literary, scientific and artistic domain whatever may be the mode or form of its expression such as works in writing, including

computer programmes, works consisting of words and expressed orally, musical works with or without words, dramatic or dramatico-musical works, audiovisual works, including cinematographic works, pantomimes and choreographic works, works of fine and applied art.

In no case copyright protection shall extend to ideas, procedures, systems or methods.

4.2 Rights conferred

The author of a work shall have the exclusive rights to do and to authorize:

- the reproduction of his work in any manner or form;
- the translation, adaptation or other alterations of his work;
- the communication of his work to the public.

The author of a work shall enjoy the moral rights conferred upon him by the Berne Convention (1971).

4.3 Limitations

Any limitations and exemptions to the economic rights shall be restricted to those allowed under the Berne Convention (1971).

4.4 Term of protection

The protection shall commence upon creation of the work and the exercise of the rights shall not be subject to any formality.

The term of protection shall be life of the author and fifty years after his death or, in the case of anonymous or pseudonymous author, fifty years after the work has been lawfully made available to the public.

5. NEIGHBOURING RIGHTS

Performers, producers of phonograms and broadcasting organizations shall enjoy protection, including moral rights.

5.1 Performers

The protection provided for performers shall include the possibility of preventing:

- the broadcasting and the communication to the public of their live performance;
- the fixation of their unfixed performance;
- the reproduction of a fixation of their performance.

5.2 Producers of phonograms

Producers of phonograms shall have the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

5.3 Broadcasting organizations

Broadcasting organizations shall have the right to authorize or prohibit:

- the fixation of their broadcasts;
- the reproduction of fixations;
- the rebroadcasting of their broadcasts and the communication to the public of their television broadcasts.

5.4 Limitations

Any limitations and exemptions to the protection by these neighbouring rights shall be restricted to those allowed under the Rome Convention.

5.5 Term of protection

The term of protection granted to producers of phonograms, performers and broadcasting organizations shall last until the end of a period of 50 years computed from the end of the year in which the fixation was made or the performance or broadcast took place.

6. LAYOUT-DESIGNS

6.1 Subject matter for protection

The original layout-design of an integrated circuit, however fixed or encoded, shall be protected by exclusive rights.

6.2 Acquisition of protection

Protection may be conditioned upon registration of the layout-design.

The applicant for registration shall be given two years from the first commercial exploitation of the layout-design to apply for registration. If deposits of identifying material are required, the applicant shall only be required to disclose information to the extent necessary to allow identification of the layout-design.

6.3 Rights conferred

The owner of a layout-design shall, without prejudice to any other intellectual property rights, have the exclusive right to do or to authorize the following:

- reproduce, whether by incorporation in an integrated circuit or otherwise, the layout-design;

import or distribute for commercial purposes a protected layout-design.

6.4 Limitations

The reproduction for private purposes or for the sole purpose of evaluation, analysis, research or teaching shall be permitted.

The reproduction shall be permitted where, on the basis on the analysis and evaluation, a new original layout-design is created ("reverse engineering").

No contracting party shall be obliged to consider unlawful the importation or distribution of an integrated circuit incorporating an unlawfully reproduced layout-design where the person performing such acts did not know and had no reasonable ground to know that it incorporate unlawfully reproduced layout-design; however, there shall be a right to an equitable remuneration for such acts after notice is received.

Any contracting party may consider lawful the importation or distribution of a layout-design that has been put on the market by, or with the consent of, the holder of the right.

6.5 Term of protection

The term of protection shall be ten years from the date of the first commercial exploitation or the date of the filing of the application for registration, if required, whichever is earlier.

7. TRADE AND BUSINESS SECRETS

Trade and business secrets shall be protected by law by providing their proprietor the right to prevent these secrets from becoming a matter of public knowledge, or being used by, others in a manner contrary to honest commercial practices.