

## **AGREEMENT**

### **on Unified Principles of Regulation in Protecting Intellectual Property Rights**

The Government of the Republic of Belarus, the Government of the Republic of Kazakhstan, and the Government of the Russian Federation, hereinafter referred to as the Parties,

following Resolution No. 35 of the Interstate Council of the Eurasian Economic Community (the Supreme Governing Body of the Customs Union) of December 19, 2009, and

intending to develop trade economic, industrial, cultural, scientific and technical cooperation, and

proceeding from the need to implement a coordinated system of measures aimed at the protection of intellectual property rights and struggle against international trade in counterfeit goods, and

striving to create favorable conditions for the formation of the Common Economic Space and the Customs Union of the Republic of Belarus, the Republic of Kazakhstan, and the Russian Federation by installing a single coordinated system for the protection of intellectual property rights,

have agreed on the following:

## **SECTION I**

### **General Provisions**

#### **Article 1**

This Agreement shall be aimed at unification of regulation principles in the field of protection of intellectual property rights and means of identification of goods, work, and services protected by the national legislation of the Parties.

#### **Article 2**

1. The Parties shall proceed on a mutual international legal basis in the field of protection of intellectual property rights, share the principles of the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization, and follow international agreements in the field of intellectual property under the administrative control of the World Intellectual Property Organization and other international agreements in which the Parties participate.
2. The Parties, which are not as yet participants to the Singapore Trademark Law Treaty of 2007 and the International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations (the 1961 Rome Convention), undertake hereby to accede to the said international agreements.
3. The Parties shall coordinate the activities within the scope of the World Intellectual Property Organization and the Council for the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization (after the states of the Parties will have acceded to the World Trade Organization).

#### **Article 3**

1. Each Party shall fix in its national legislation the provisions on providing natural persons and legal entities, intellectual property assets, and identification means of the states of other Parties with the same level of protection of intellectual property rights as that provided for its natural persons and legal entities, intellectual property assets, and identification means on its territory within the scope

specified hereby and in compliance with international commitments of the Parties.

2. In their national legislation, the Parties may apply norms ensuring a level of protection of intellectual property rights higher than that hereunder, provided such norms do not contradict the provisions hereof.

## **SECTION II**

### **Copyright and Related Rights**

#### **Article 4**

1. The Parties shall ensure the protection of intellectual property assets on the basis of the Berne Convention for the Protection of Literary and Artistic Works of 1971, the Copyright Treaty of the World Intellectual Property Organization, and the Performance and Phonogram Treaty of the World Intellectual Property Organization.
2. Computer programs including source texts and object codes shall be protected as literary works in compliance with the Berne Convention for the Protection of Literary and Artistic Works of 1971.
3. Compiled works, i.e. works representing by their selection or composition of materials a creative product, shall be protected per se. At the same time, compiled works shall be copyrighted independently of whether the works they are based on or include form a copyright subject matter.
4. Works of science, literature, and art shall be copyrighted. The author of a work shall enjoy particularly the following rights:
  - 1) exclusive right to a work;
  - 2) right of authorship;
  - 3) author's right to a name;
  - 4) right to integrity of a work;
  - 5) right to publish a work;
  - 6) other rights established under the national legislation of the Parties.
5. The Parties shall reduce to isolated incidents restrictions and exemptions for rights to intellectual property assets protected under this Article that do not contradict common use of works or subject matters of related rights and do not infringe upon lawful interests of copyright holders.
6. The Parties shall ensure the term of protection for the exclusive right to a work by an author, the exclusive right to a work of joint authorship, and the exclusive right to a posthumous work to be no shorter than the term of protection under the Berne Convention for the Protection of Literary and Artistic Works of 1971, the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization, and the International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations (the 1961 Rome Convention). Longer terms of protection may be fixed by the national legislation of the Parties for the rights under this Article.

#### **Article 5**

Each Party shall grant the owners of copyright in cinematographic works the right to permit or prohibit public commercial distribution of originals or copies of their copyrighted works on the territory of the state of another Party.

### **Article 6**

For the purposes of this Agreement, intellectual (property and personal non-property) rights to the results of performing activity (performance) and phonograms and other rights under the national legislation of the Parties shall be rights related to copyright (related rights).

### **Article 7**

1. For the purposes of this Agreement, a performer shall be a natural person whose creative work has created a performance, - a performing artist (actor, singer, musician, dancer or another person who acts, delivers, recites, sings, plays a musical instrument or otherwise participates in performing a work of literature, art, or folk art including variety, circus, or puppet show acts), a stage producer of a show (a person staging a theater, circus, puppet, variety or another theatrical production), and a conductor.
2. The Parties shall grant the following rights to performers of the Parties on a mutual basis:
  - 1) exclusive right of performance;
  - 2) right of authorship – the right to be recognized as the author of a performance;
  - 3) right to a name – the right to indicate one's name or pseudonym on phonogram copies and in other cases of using the performance and the right to indicate the name of a group of performers except for cases when the nature of using a work does not allow indicating the name of a performer or of a group of performers;
  - 4) other rights under the national legislation of the Parties.
3. The performers shall exercise their rights, observing the rights of the authors of performances being presented.
4. The rights of a performer shall be recognized and valid independently of the existence and validity of the copyright to performances being presented.

### **Article 8**

1. For the purposes of this Agreement, a person having taken the initiative and responsibility for the first recording of sounds of a performance, or other sounds, or representation of such sounds shall be recognized as the maker (producer) of a phonogram. Unless proved otherwise, a person whose name is indicated in a usual manner on a phonogram copy and (or) its container shall be recognized as the maker (producer) of a phonogram.
2. The Parties shall grant the following rights to the makers (producers) of phonograms:
  - 1) exclusive right to a phonogram;
  - 2) other rights under the national legislation of the Parties.
3. The Parties shall provide the term of protection for the rights of makers (producers) of phonograms to be no shorter than that set by the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization and the International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations (the 1961 Rome Convention). Longer terms of protection may be fixed by the national legislation of the Parties for the rights under this Article.

### **Article 9**

1. The makers (producers) of phonograms shall have the right to permit or prohibit the following on the territory of the states of the Parties:
  - 1) direct or indirect reproduction of their phonograms;
  - 2) import to the territory of the state of another Party of a phonogram copy produced without the permission of the maker (producer) of such phonogram.

#### **Article 10**

1. For the purposes of this Agreement, an organization acting under the national legislation of the Parties and within the powers granted to it by authors, performers, makers (producers) of phonograms, and other owners of copyright and related rights (hereinafter, authors and other owners of copyright) in the field of collective management of respective rights to ensure royalties to authors and other owners of copyright on the use of the subject matters of copyright and related rights shall be a collective management organization.
2. For the purpose of efficient execution of the property rights of authors and other owners of copyright on the territory of the Common Economic Space member-states, the Parties shall promote the creation and operation of collective management organizations, when individual execution of such rights is hindered, or when the national legislation of the Parties allows using the subject matters of copyright and related rights without permission of the owners of such rights but with royalties paid to such owners.
3. For the purpose of providing lawful use of the subject matters of copyright and related rights based on the concern for complete and effective execution of the rights of authors and other owners of copyright, the Parties shall provide a possibility for the collective management organizations to act in the interests of both authors and other owners of copyright that have directly delegated respective powers to such organizations and authors and other owners of copyright that have not straightly refused from acting in their own interests, including execution of the right to royalties on free reproduction of phonograms and audiovisual works for personal purposes.
4. For the purpose of installing a uniform system for the protection and execution of copyright and related rights, the Parties shall enter, prior to the date of this Agreement, into an international agreement that inter alia provides for:
  - 1) determining a uniform procedure for collective management of rights including the right to royalties on free reproduction of phonograms and audiovisual works for personal purposes;
  - 2) forming databases of protected subject matters of copyright and related rights and an information exchange procedure;
  - 3) determining the work procedure for a commission in charge of coordinating the work of collective management organizations of the Common Economic Space member-states.

#### **Trademarks**

#### **Article 11**

1. For the purposes of this Agreement, a trademark or a service mark (hereinafter, the trademark) shall mean a sign protected by the national legislation of the Parties and international agreements in which the Parties participate and used to distinguish goods and (or) services of particular participants of the civil turnover from goods and (or) services of other participants of the civil turnover.

Words, images, three-dimensional signs and other signs or their combinations may be registered as trademarks. Other signs may be registered as trademarks to the extent permitted by legislative acts of the states of the Parties. A trademark may be registered in any color or a combination of colors.

### **Article 12**

1. The owner of a trademark shall have an exclusive right to use and dispose of the trademark and the right to prohibit the use of the trademark by other persons.
2. The term of original registration of a trademark may be renewed unlimitedly at the request of the trademark owner filed within the last year of the registration validity, each time for a period not to exceed 10 years.

### **Article 13**

From the date of this Agreement, the Parties shall apply the following principle of exhaustion for exclusive trademark rights: using a trademark in relation to goods that have been lawfully introduced into the civil turnover on the territory of the states of the Parties directly by the trademark owner or by other persons with the consent of such owner shall not constitute a violation of the exclusive right to such trademark.

### **Article 14**

Prior to the date of this Agreement, the Parties shall work out and implement uniform procedures for providing legal protection of trademarks and designation of origin (geographical indication) of goods on the territory of their states. The Parties shall document the uniform registration procedures for trademarks and protected designation of origin (geographical indication) of goods in a separate agreement.

## **Protected Designation of Origin of Goods**

### **Article 15**

1. For the purposes of this Agreement, the protected designation of origin of goods under legal protection shall mean a sign indicating or containing a contemporary or historical, official or unofficial, full or abbreviated name of a country, city, village, area or another geographic location, as well as a derivative of such name recognized due to being used in relation to goods particular qualities of which are solely or primarily determined by natural environment and (or) human factors characteristic of a given geographic location.

The above provisions shall apply to a sign that identifies goods as originating from the territory of a particular geographic location and that, though not containing the name of such location, is recognized due to being used in relation to goods particular qualities of which meet the requirements of the first paragraph of this Article.

A sign, though indicating or containing the name of a geographic location, but generically used to designate a particular type of goods without reference as to the place of their production shall not be recognized as the protected designation of origin.

2. For the purposes of this Agreement, the Parties shall provide legal steps related to protected designation of origin to allow the concerned parties to prevent the following:
  - 1) Use of any signs to designate or present goods that indicate or create an impression that the goods originate from a geographic location other than the real place of their origin, misleading the consumers as to the geographic origin of the goods;

- 2) Any use that constitutes an act of unfair competition under 10-bis of the Paris Convention for the Protection of Industrial Property of 1967.

### **Patent Rights**

#### **Article 16**

1. The right to invention, utility model, and industrial design shall be protected according to a procedure set forth by the national legislation of the Parties and shall be certified by a title of protection attesting the priority, authorship, and exclusive right of a patent holder to such invention, utility model, or industrial design.
2. The author of an invention, utility model, or industrial design shall exercise the following rights:
  - 1) exclusive right;
  - 2) right of authorship.
3. In particular cases provided for by the national legislation of the Parties, the author of an invention, utility model, or industrial design shall exercise as well other rights including the right to obtain a patent, the right to remuneration for the use of a company's invention, utility model, or industrial design.
4. The term of the exceptional right to an invention, utility model, or industrial design and of a patent certifying such right shall begin on the patent application filing date under the conditions established by the national legislation of the Parties and shall extend for:
  - at least 20 years for inventions;
  - at least 5 years for utility models;
  - at least 5 years for industrial designs.

#### **Article 17**

A patent for an invention, utility model, or industrial design grants the patent holder an exclusive right to use the invention, utility model, or industrial design by any method complying with the law.

Should a product be the subject of a patent, the patent holder shall have the right to prevent, inter alia, the manufacture, use, storage, offer for sale, selling, or import of such product for such purposes by third persons without the consent of the patent holder.

Should a method be the subject of a patent, the patent holder shall have the right to prevent embodiment of the method without the consent of the patent holder, as well as the use, storage, offer for sale, selling, or import for such purposes of, inter alia, any product directly obtained through such method.

#### **Article 18**

The Parties shall have the right to provide for limitation of rights granted by the titles of protection on condition that such exceptions do not unreasonably damage the common application of inventions, utility models, or industrial designs or unfairly affect lawful interests of the patent holder with account of lawful interests of third parties.

### **SECTION III**

#### **Enforcement**

### **Article 19**

The Parties shall commit themselves to take law enforcement actions to ensure effective protection of rights to intellectual property assets.

### **Article 20**

The Parties shall provide for legislative measures aimed at effectively suppressing the circulation of counterfeit goods on the common customs territory of the Customs Union, as well as unified measures of counteracting any intellectual property infringement in Internet.

### **Border Measures**

### **Article 21**

The Parties shall provide for actions aimed at protecting the rights to intellectual property assets specified in the Customs Code of the Customs Union.

### **Administrative and Criminal Measures**

### **Article 22**

In order to create a uniform system for the protection of rights to intellectual property assets and to implement provisions of Article 20 hereof, the Parties shall provide for an agreement on coordination of action in protecting the rights to intellectual property assets to be entered into by authorities of the Parties.

## **SECTION IV**

### **Transparency**

### **Article 23**

1. Laws and other regulatory acts, as well as final court and administrative decisions of general purpose introduced by any of the Parties and pertaining to the subject hereof (availability, scope, acquisition, enforcement, and prevention of abuse of rights to intellectual property assets) shall be subject to official publication and, should such publication be inexpedient, shall be made publicly available for government authorities and right holders.

Agreements pertaining to the subject hereof between the government or a government authority of one Party and the government or a government authority of another Party shall be published as well.

2. Each Party shall readily provide information pursuant to item 1 of this Article in response to a written request received from another Party. A Party reasonably assuming that a particular court or administrative decision or a bilateral agreement in the field of intellectual property rights affects its interests provided hereunder may forward a written request for access to be provided to such court or administrative decisions or bilateral agreements or for information on such decisions and agreements to be properly disclosed.
3. The Parties undertake to notify the Intellectual Property Coordination Council of the Common Economic Space about draft legislative acts and other regulatory legal acts pertaining to the subject hereof.
4. Nothing contained in items 1-3 of this Article shall demand confidential information disclosure by the Parties, which would interfere with law enforcement or otherwise contradict public interests or

damage lawful commercial interests of particular state or private enterprises.

### **Coordination Council**

#### **Article 24**

1. For the purpose of performing functions of regular coordination and information and technical cooperation in the field of intellectual property protection between agencies of the states of the Parties, the Parties shall provide for the creation of a permanent institutional mechanism, i.e. the Intellectual Property Coordination Council of the Common Economic Space (hereinafter, the Coordination Council).

The Parties shall work out and approve the Coordination Council Regulations. Each Party shall appoint a co-chairman of the Coordination Council.

2. The co-chairmen of the Coordination Council shall approve the lists of experts of the Council including representatives of the Parties.

The Coordination Council shall also include representatives of the Secretariat of the Integration Committee of the Eurasian Economic Community the competency of which covers policy coordination of the Eurasian Economic Community member-states in the field of intellectual property protection

The Parties shall provide for regular meetings of the Coordination Council to be held at least annually.

### **Dispute Settlement**

#### **Article 25**

Disputes among the Parties as to interpretation and (or) application of this Agreement shall be settled through consultations and negotiations.

Should the Parties fail to achieve an agreement within 6 months after the date of receipt of an official written request for consultations and negotiations sent by one Party to the other Parties, such dispute shall be referred to the EurAsEC Court by any of the Parties.

### **SECTION V**

#### **Coming into Force**

#### **Article 26**

Amendments hereto may be introduced by agreement of the Parties and shall be documented in separate protocols.

#### **Article 27**

This Agreement shall come into force on January 1, 2012, but no earlier than the date the depository receives from the Parties the last written notification of the completion of their domestic procedures required for this Agreement to come into force.

The procedure for accession to and withdrawal from this Agreement shall be determined by the Protocol on the procedure for coming into force of, accession to, and withdrawal from international agreements aimed at forming the contractual legal basis for the Customs Union of October 6, 2007.



This Agreement was executed in the city of Moscow on December 9, 2010 in one original counterpart in Russian.

The original counterpart hereof shall be kept by the Integration Committee of the Eurasian Economic Community, which is its depository and which shall forward a certified copy hereof to each Party.

**On behalf of  
the Government of  
the Republic of Belarus**

*/Signature/*

**On behalf of  
the Government of  
the Republic of Kazakhstan**

*/Signature/*

**On behalf of  
the Government of  
the Russian Federation**

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