



NUMBER: 16-16

December 2016

RCEP: Model Language Suggestions for IP and Digital Trade

The Asian Trade Centre (ATC) has already provided suggestions for new thinking in RCEP on the connection between digital trade and intellectual property rights.

This Policy Brief expands on these previous suggestions to include the following model language:

Negotiators should include the following copyright exceptions that will enable RCEP Internet companies and users to take full advantage of new technologies in a manner that does not harm legitimate interests of copyright holders:

- Parties shall achieve an appropriate balance in copyright and related rights system, including by means of certain limitations or exceptions, including those for the digital environment.
- In achieving balance, Parties shall give due regard to legitimate purposes such as comment; news reporting; critique; teaching, scholarship, research, and other similar purposes; and facilitating access to published works for persons who are blind, visually impaired, or otherwise print disabled.
- Parties shall recognize that a use with commercial aspects can, in appropriate circumstances, be considered to have a legitimate purpose.

Negotiators should not include language that would allow rights holders to prohibit temporary copies of their works, and should enable Internet services to make temporary copies—including temporary storage of content in electronic form—without being subject to licensing fees.

- [Avoid including references to “temporary” or “transient” copies or reproductions in the negotiating text.]

To eliminate possible ambiguity when considering the question of quotation rights, and reduce risk and uncertainty for companies, RCEP negotiators should develop language that reflects Article 10(1) of the Berne Convention:

- Parties shall permit the making of quotations from a published work if they are compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

RCEP negotiators should address copyright exhaustion:

- Parties shall permit the importation of a copy of a work unless the person importing the copy knows, or ought reasonably to know, that the making of the article was carried out without the consent of the owner of the copyright.

While damages for copyright infringement are a crucial part of any IP system, RCEP negotiators should guard against damages regimes that are disproportionate, uncertain, or likely to have a chilling effect on innovation:

- Parties shall require compensatory damages, and may allow for the recovery of additional damages.
- Parties shall take into account the need for proportionality between the seriousness of the infringement of the intellectual property right and the applicable remedies and penalties.