**SKRIPSI**

# PERBANDINGAN *GENERAL PUBLIC LICENSE* PADA *LINUX* MENURUT KETENTUAN UNDANG – UNDANG HAK CIPTA INDONESIA DAN AMERIKA SERIKAT

# *THE LEGAL COMPARISON OF GENERAL PUBLIC LICENSE TERMS IN LINUX ACCORDING TO INDONESIA AND UNITED STATES OF AMERICA COPYRIGHT ACT*

**DIKA BIMANSTARA**
**NIM. 080710101062**

**KEMENTERIAN PENDIDIKAN DAN KEBUDAYAAN**
**UNIVERSITAS JEMBER**
**FAKULTAS HUKUM**
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# MOTTO

***SCIENTIA EST LUX LUCIS***

**ILMU PENGETAHUAN ADALAH PENCERAHAN**

**(LEONARDO DA VINCI)**

## PERSEMBAHAN

Skripsi ini Penulis persembahkan kepada :

1. Ayahanda Budi Suwardi dan Ibunda Septiani tercinta, yang telah membesarkan penulis dengan penuh rasa kasih sayang, serta tiada hentinya selalu memberikan semangat dan mendo'akan penulis untuk bisa menyelesaikan Skripsi ini.
2. Alma Mater tercinta Fakultas Hukum Universitas Jember yang selalu saya banggakan.
3. Bapak dan Ibu Guru sejak penulis duduk dibangku TK sampai dengan SMA, serta Bapak dan Ibu Dosen yang telah memberikan ilmu dan bimbingan dengan penuh kesabaran.
4. Kedua adik penulis, Banu Tito Raharjo, dan Adik Tri Egy Yudho Yunantoro yang saya sayangi, yang telah menyertai, memberi saya semangat, dukungan, dan hari-hari yang penuh warna saat-saat kita berkumpul bersama dirumah.

# PERBANDINGAN *GENERAL PUBLIC LICENSE* PADA *LINUX* MENURUT KETENTUAN UNDANG – UNDANG HAK CIPTA INDONESIA DAN AMERIKA SERIKAT

# *THE LEGAL COMPARISON OF GENERAL PUBLIC LICENSE TERMS IN LINUX ACCORDING TO INDONESIA AND UNITED STATES OF AMERICA COPYRIGHT ACT*

## SKRIPSI

Diajukan sebagai salah satu syarat memperoleh gelar Sarjana Hukum
pada Fakultas Hukum Universitas Jember

**DIKA BIMANSTARA**
**NIM. 080710101062**

**KEMENTERIAN PENDIDIKAN DAN KEBUDAYAAN**
**UNIVERSITAS JEMBER**
**FAKULTAS HUKUM**
**2013**

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**PERBANDINGAN *GENERAL PUBLIC LICENSE* PADA *LINUX* MENURUT KETENTUAN UNDANG – UNDANG HAK CIPTA INDONESIA DAN AMERIKA SERIKAT.**

***THE LEGAL COMPARISON OF GENERAL PUBLIC LICENSE TERMS IN LINUX ACCORDING TO INDONESIA AND UNITED STATES OF AMERICA COPYRIGHT ACT.***

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## PERNYATAAN

Saya yang bertanda tangan dibawah ini:

NAMA : Dika Bimanstara

NIM : 080710101062

Menyatakan dengan sesungguhnya bahwa karya ilmiah dengan judul **"PERBANDINGAN *GENERAL PUBLIC LICENSE* PADA *LINUX* MENURUT KETENTUAN UNDANG – UNDANG HAK CIPTA INDONESIA DAN AMERIKA SERIKAT."** adalah benar-benar hasil karya sendiri, kecuali jika disebutkan sumbernya dan belum pernah diajukan pada institusi manapun, serta bukan karya jiplakan. Saya bertanggung jawab atas keabsahan dan kebenaran isinya sesuai dengan sikap ilmiah yang harus dijunjung tinggi.

Dengan pernyataan ini saya buat dengan sebenar-benarnya tanpa tekanan dan paksaan dari pihak manapun serta bersedia mendapat sanksi akademik jika ternyata di kemudian hari pernyataan ini tidak benar.

Jember, 28 Juni 2013

Yang menyatakan,

Dika Bimanstara
NIM. 080710101062

## UCAPAN TERIMA KASIH

Puji syukur Alhamdulillah penulis panjatkan kehadirat Allah SWT atas segala rahmat dan hidayah-Nya, sehingga penulis diberi kemudahan, kesabaran, kekuatan serta hikmah yang terbaik dalam menyelesaikan skripsi yang berjudul: "**PERBANDINGAN *GENERAL PUBLIC LICENSE* PADA *LINUX* MENURUT KETENTUAN UNDANG – UNDANG HAK CIPTA INDONESIA DAN AMERIKA SERIKAT**."yang disusun guna memenuhi salah satu syarat menyelesaikan program studi ilmu hukum dan mencapai gelar sarjana hukum pada Fakultas Hukum Universitas Jember.

Keberadaan skripsi ini tidak terlepas dari bantuan serta dorongan dari berbagai pihak. Untuk itu penulismengucapkan terima kasih yang sebesar-besarnya kepada:

1. Bapak Mardi Handono, S.H., M.H. Pembimbing Skripsi, yang telah meluangkan waktu ditengah kesibukannya untuk memberikan bimbingan dan petunjuk dalam penulisan skripsi ini;
2. Ibu Emi Zulaika, S.H, M.H. Pembantu Pembimbing Skripsi, yang telah memberikan masukan, motivasi, maupun ilmu serta petunjuk dalam penulisan skripsi ini;
3. Ibu Edi Wahjuni, SH., M.Hum. Ketua penguji skripsi yang telah bersedia meluangkan waktunya untuk menguji skripsi;
4. Bapak Firman Floranta Adonara, S.H., M.H. Sekretaris penguji skripsi yang telah bersedia meluangkan waktunya untuk menguji skripsi;
5. Bapak Dr. Widodo Ekatjahjana, S.H, M.H., Dekan Fakultas Hukum Universitas Jember;
6. Bapak Dr. Nurul Ghufron, S.H., M.H., Pembantu Dekan I, Bapak Mardi Handono, S.H.,M.H., Pembantu Dekan II dan Bapak Iwan Rachmad Soetijono, S.H, M.H., Pembantu Dekan III.
7. Bapak Sugijono, S.H.,M.H.,Ketua Jurusan Hukum Perdata atas arahan, masukan, dan bimbingan dalam pengajuan pemprogramanskripsi dan pengajuan ujian skripsi;
8. Bapak Rizal Nugroho, S.H, M.Hum, selaku Dosen Pembimbing Akademik (DPA) yang selalu memberikan bimbingan, konsultasi dan masukan selama melaksanakan kuliah di Fakultas Hukum Universitas Jember;

9. Seluruh keluarga besar kantor KPKNL Jember yang telah memberikan ijin dan pengarahan di dalam melaksanakan Kuliah Kerja Mahasiswa;
10. Seluruh Pegawai dan Karyawan di lingkungan Fakultas Hukum Universitas Jember, terima kasih atas segala bantuan dan kemudahan fasilitas yang diberikan;
11. Teman - teman seperjuangan khususnya Rizky Fathur Rozi, Fuad Ribkan, Winda Hayu Istiqomah, Ageng Wicaksono, Dewi Asih Nawang Wulan, danBagas Setya D.N yang telah menjadi sahabat dan teman seperjuangan dibangku kuliah serta teman-temanku yang lain yang tidak dapat penulis sebutkan satu-satu yang telah memberikan kenangan indah di kampus tercinta ini;
12. Erlin Mutia Tauri sahabat terdekat yang selalu menemani disaat suram dan senang selama pengerjaan skrpisi ini;
13. Ardian Hadibiguna sekeluarga di bandung dan Mika Isriantiani sekeluarga di Jakarta yang telah banyak memberikan bantuan selama proses pengerjaan dan pengempulan bahan skripsi ini;
14. Adikku Banu Tito Raharjo dan Tri Egy Yudho Yunantoro yang telah mendo'akan dan memberikan bantuan serta dukungan baik secara moril mau pun materiil kepada penulis;

Semoga do'a, bimbingan, dan semangat yang telah diberikan kepada penulis mendapat balasan dari Allah SWT. Karya tulis ini tidaklah akan pernah sempurna, karena kesempurnaan hanyalah milik Allah SWT semata. Oleh karena itu, kritik dan saran yang bersifat konstruktif akan membantu Penulis dalam setiap langkah menuju arah perbaikan. Akhirnya, penulis mengharapkan karya ilmiah ini dapat bermanfaat bagi penulis,dan pembaca.

Jember, 28 Juni 2013

Penulis

# RINGKASAN

Lisensi *General Public License* yang diberlakukan pada sebagian besar perangkat lunak berbasis system operasi *Linux* merupakan lisensi yang unik karena berimplikasi penggandaan, pemodifikasian, dan pendistribusian secara bebas kepada seluruh pihak tanpa batas baik dengan tujuan komersil maupun non komersil yang bertolak belakang dengan ketentuan atas hak cipta. Adapun lisensi *General Public License* yang sifatnya terbuka dimana mengusung copyleft sebagai lawan dari *copyright,* konsep *copyleft* memperbolehkan perubahan dan penggandaan bahkan penjualan kembali atas *Source Code* dari perangkat lunak yang telah dimodifikasi tersebut bagaimana implikasinya dalam ketentuan hak cipta, *copyleft* ini berdasarkan perbandingan antara hukum hak cipta di Indonesia dan di Amerika Serikat

Rumusan masalah yang akan dibahas dalam penulisan skripsi ini adalah sebagai berikut : 1. Bagaimana pengaturan klaim atas hak cipta dalam *General Public License* pada *Linux* terkait ketentuan Undang – Undang Hak Cipta Amerika Serikat dan di Indonesia, 2. Bagaimana ketentuan pembatasan dan pengecualian atas hak cipta pada *General Public License* pada *Linux* yang diatur dalam Undang – Undang Hak Cipta Amerika Serikat dan di Indonesia, 3. Bagaimana perbandingan *General Public License* pada *Linux* menurut ketentuan Undang - Undang Hak Cipta Indonesia dan Amerika Serikat.

Penulisan skripsi ini memiliki tujuan yaitu tujuan umum dan tujuan khusus. Tujuan khusus yang ingin dicapai dalam penulisan skripsi ini adalah: untuk mengkaji pengaturan klaim atas hak cipta dalam *General Public License* pada *Linux* terkait ketentuan Undang – Undang Hak Cipta Amerika Serikat dan di Indonesia, untuk mengkaji ketentuan pembatasan dan pengecualian atas hak cipta pada *General Public License* pada *Linux* yang diatur dalam Undang – Undang Hak Cipta Amerika Serikat dan di Indonesia, serta untuk mengkaji perbandingan *General Public License* pada *Linux* menurut ketentuan Undang - Undang Hak Cipta Indonesia dan Amerika Serikat Metode yang digunakan dalam penulisan skripsi ini adalah yuridis normatif *(Legal Research),* sedangkan untuk pendekatan masalah yang digunakan dalam penulisan skripsi ini adalah pendekatan undang-undang *(statute approach)* dan pendekatan konseptual *(conceptual approach),* bahan hukum yang akan dikaji dalam penulisan skripsi ini terdiri dari bahan hukum primer, bahan hukum sekunder dan bahan non hukum.

Kesimpulan dari penulisan skripsi ini adalah: (1) Pengaturan klaim atas hak cipta dalam *General Public License* pada *Linux* terkait ketentuan Undang – Undang Hak Cipta Amerika Serikat dan di Indonesia pada dasarnya sama sampai kepada pengaturan atas perlindungan hak cipta pencipta original, namun yang menjadi masalah adalah klaim apabila perangkat lunak berlisensi GPL melahirkan turunan atas modifikasi pengguna yang dapat sekaligus menjadi pengembang sebagai implikasi atas hak yang diberikannya toleh lisensi. Adapun ketentuan Amerika Serikat diatur jelas mengenai hasil karya turunan namun pengaturan ketentuan hak cipta Indonesia dalam hal ini tidak diatur mengenai hasil karya turunan menyangkut perangkat lunak dalam kasus lisensi GPL ini. (2) Ketentuan pembatasan dan pengecualian atas hak cipta pada *General Public License* pada *Linux* yang diatur dalam Undang – Undang Hak Cipta Amerika Serikat dan di Indonesia sendiri pada dasarnya relatif sama dalam hal substansinya walaupun secara khusus dalam ketentuan hak ciptanya Amerika Serikat diatur secara terpisah mengenai pembatasan atas hak ekslusif program komputer yang diatur pula mengenai pemberian izin aatas penyesuauan dalam bentuk modifikasi salinan yang dapat dilakukan seizin pencipta. Sedangkan dalam ketentuan hukum hak cipta Indonesia sangat dibatasi mengenai penggunaaan salinan program yang hanya dapat digunakan secara pribadi oleh pemilik dan segala bentuk salinan merupakan hal illegal yang selama hanya digunakan untuk tujuan komersil tidak dianggap sebagai pelanggaran hak cipta. (3) Perbandingan *General Public License* pada *Linux* menurut ketentuan Undang - Undang Hak Cipta Indonesia dan Amerika serikat adapun memiliki kesamaan karena merupakan ketentuan turunan hasil ratifikasi dari *WIPO Treaty* dan ketentuan *TRIP's Agreement* namun perbedaan mencolok terlihat dari klaim atas hasil karya turunan yang merupakan hasil modifikasi atas program original serta pembatasan atas ruang lingkup salinan dari perangkat lunak komputer, yang memberikan kesan bahwa perlindungan atas hak cipta *open source* di Indonesia masih sangat kurang

## DAFTAR ISI

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## DAFTAR LAMPIRAN

# BAB I
# PENDAHULUAN

## 1.1 Latar Belakang Masalah

Pesatnya kemajuan dibidang teknologi di Indonesia akhir – akhir ini menjadi pemicu semakin besarnya tuntutan masyarakat atas perangkat lunak maupun yang disediakan oleh pasar di Indonesia. Tentu saja diimbangi dengan harga perangkat lunak yang tersedia di pasaran yang juga tidak murah bagi sebagian orang. Bila berbicara mengenai perangkat lunak atau *Software* tentu sebagian dari kita sudah tidak asing lagi bila mendengar mengenai Sistem Operasi *Windows* atau *Operating System Windows*, bukan hanya sudah mendunia *Operating System* ini bahkan telah banyak digunakan hampir di seluruh dunia, *Windows* 7 kini menjadi sistem operasi paling populer untuk perangkat komputer pribadi. Untuk kali pertamanya, *Windows* 7 mampu mengalahkan *Windows* XP. Penelitian Net Applications pada bulan Agustus tahun 2012 lalu, mencatat *Windows* 7 berhasil meraih pangsa pasar 42,76% di dunia, lalu dibayang-bayangi oleh *Windows* XP sebesar 42,52%.[1]

*Operating System windows* terutama *Windows* XP dan *Windows* 7 memang telah banyak dikenal luas, namun tentu saja bila kita bicara mengenai perangkat lunak kita juga akan membahas mengenai ketentuan hukum terkait Hak Atas Kekayaan Intelektual yang mengaturnya. Dalam hal ini lebih spesifik hak cipta atas perangkat lunak tersebut, hak cipta inilah yang membatasi penggandaan atas perangkat lunak tersebut melalui lisensi. Melalui lisensi ini juga kita mendapat hak atas penggunaan perangkat lunak yang tentunya kita beli terlebih dahulu lisensinya. Namun lain halnya dengan sistem operasi *Linux*.

*Linux* adalah sistem operasi berbasis Unix yang dibuat oleh Linus Torvalds, dikembangkan oleh GNU *General Public License*. *Linux* bersifat *open-source* atau bebas digunakan atau didownload oleh pengguna komputer diseluruh dunia atau juga disebut dengan istilah FOSS (*Free* / *Open source Software*). Berbeda dengan saingannya *Linux*

[1]Dikutip dari http://wikuhapsara.blogspot.com/2012/09/jumlah-pengguna-*windows*-7-kalahkan-xp.html diakses 17 januari 2013.

menawarkan kebebasan yang dapat dimiliki semua orang sesuai dengan konsep kebebasan sebebasnya pada *Linux*.

Para pengamat teknologi informatika beranggapan kesuksesan *Linux* dikarenakan *Linux* tidak bergantung kepada vendor (*vendor independence*), biaya operasional yang rendah, dan kompatibilitas yang tinggi dibandingkan versi UNIX tak bebas, serta faktor keamanan dan kestabilannya yang tinggi dibandingkan dengan sistem operasi lainnya seperti Microsoft *Windows*. Ciri-ciri ini juga menjadi bukti atas keunggulan model pengembangan perangkat lunak sumber terbuka (*open source Software*) atau gratis. *Linux* mempunyai kelebihan karena dikembangkan oleh kerjasama programmer profesional non-komersil, meskipun sekarang dinilai inferior oleh mayoritas pengguna komputer rumah atau desktop. Para pengamat yakin bahwa *Linux* dapat menjadi sistem operasi yang unggul di masa yang akan datang.[2]

Di Amerika Serikat, *Linux* merupakan merek dagang (SN: 1916230) yang dimiliki oleh Linus Torvalds. *Linux* terdaftar sebagai Program sistem operasi komputer bagi penggunaan komputer dan operasi. Merek dagang ini didaftarkan setelah ada suatu kejadian di mana seorang pemalsu bernama William R Della Croce Jr mulai mengirim surat kepada para distributor *Linux* dan megklaim *trademark Linux* adalah hak miliknya serta meminta royalti sebanyak 10% dari mereka. Para distributor *Linux* mulai mendorong agar *trademark* yang asli diberikan kepada Linus Torvalds. Pemberian lisensi *trademark Linux* sekarang dibawah pengawasan *Linux* Mark Institute. Adapun mengenai hak cipta mengacu kepada *Copyright Law* dimana diatur melalui *United States Code Article* 107 mengenai hak cipta.

Di Indonesia sendiri pengaturan hak cipta mengenai kode sumber atas perangkat lunak diatur sangat ketat mengacu pada ketentuan Undang - Undang No. 19 Tahun 2002 Tentang Hak Cipta dimana dalam ketentuan Pasal 12 Ayat (1) dan penjelasan Pasal 72 Ayat (3).

Pasal 12 Ayat (1) yang kurang lebih berbunyi sebagai berikut:

Dalam undang – undang ini Ciptaan yang dilindungi adalah Ciptaan dalam bidang ilmu pengetahuan, seni, dan sastra, yang mencakup:

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[2] Dikutip dari http://kumpulanteknologi.blogspot.com/2012/05/kelebihan-dan-kekurangan-*Linux*.html diakses 18 januari 2013.

a. buku, program komputer, pamflet, perwajahan (layout) karya tulis yang diterbitkan, dan semua hasil karya tulis lain;
b. ceramah, kuliah, pidato, dan ciptaan lain yang sejenis dengan itu;
c. alat peraga yang dibuat untuk kepentingan pendidikan dan ilmu pengetahuan;
d. lagu atau musik dengan atau tanpa teks;
e. drama atau drama musikal, tari, koreografi, pewayangan, dan pantomim;
f. seni rupa dalam segala bentuk seperti seni lukis, gambar, seni ukir, seni kaligrafi, seni pahat, seni patung, kolase, dan seni terapan;
g. arsitektur;
h. peta;
i. seni batik;
j. fotografi;
k. sinematografi;
l. terjemahan, tafsir, saduran, bunga rampai, database, dan karya lain dari hasil pengalihwujudan.

Penjelasan Pasal 72 Ayat (3) yang kurang lebih berbunyi sebagai berikut:

1. Yang dimaksud dengan memperbanyak penggunaan adalah menggandakan atau menyalin program Komputer dalam bentuk kode sumber (*source code*) atau program aplikasinya.
2. Yang dimaksud kode sumber adalah sebuah instruksi (*file*) program yang berisi pernyataan-pernyataan (*statements*) pemrograman, kode-kode instruksi/perintah, fungsi, prosedur dan objek yang dibuat oleh seorang pemrogram (*programmer*)…"
3. Pidana penjara paling lama 5 tahun dan/atau denda paling banyak Rp.500.000.000,00 (lima ratus juta rupiah).

Berdasarkan hal tersebut dapat kita simpulkan kelebihan *Linux* terutama dalam hal hak cipta dapat menjadi solusi dari problem atas maraknya pembajakan perangkat lunak terutama *Operating Software Windows* yang kerap kali terjadi di Indonesia.[3] Namun terlepas dari itu semua bagaimana pengaturan di negara Indonesia sendiri mengenai isu hukum *Copyleft* pada *Linux* berdasarkan ketentuan undang – undang Hak Cipta Indonesia

[3] Dikutip dari http://teknologi.news.viva.co.id/news/read/309509-ri-masih-bermasalah-dengan-pembajakan-produk.html diakses 02 februari 2013.

apabila di komparasikan dengan ketentuan mengenai hak cipta milik pemerintah Amerika Serikat.

Berdasarkan latar belakang di atas, penulis tertarik untuk mengkaji dan membahasnya dalam suatu karya ilmiah berbentuk Skripsi dengan judul :

**"PERBANDINGAN *GENERAL PUBLIC LICENSE* PADA *LINUX* MENURUT KETENTUAN UNDANG - UNDANG HAK CIPTA INDONESIA DAN AMERIKA SERIKAT"**

## 1.2 Rumusan Masalah

Berdasarkan latar belakang yang telah di uraikan diatas, maka permasalahan yang akan di bahas adalah sebagai berikut:

1. Bagaimana pengaturan klaim atas hak cipta dalam *General Public License* pada *Linux* terkait ketentuan Undang – Undang Hak Cipta Amerika Serikat dan di Indonesia ?
2. Bagaimana ketentuan pembatasan dan pengecualian atas hak cipta pada *General Public License* pada *Linux* yang diatur dalam Undang – Undang Hak Cipta Amerika Serikat dan di Indonesia ?
3. Bagaimana perbandingan *General Public License* pada *Linux* menurut ketentuan Undang - Undang Hak Cipta Indonesia dan Amerika serikat ?

## 1.3 Tujuan Penulisan

Agar dalam penulisan skripsi ini dapat diperoleh sasaran yang dikehendaki, maka perlu ditetapkan suatu tujuan penulisan. Adapun tujuan penulisan disini dapat dibagi menjadi 2 (dua) yaitu tujuan umum dan tujuan khusus.

### 1.3.1 Tujuan umum

Tujuan umum yang ingin dicapai adalah :

1. Untuk memenuhi dan melengkapi tugas sebagai persyaratan yang bersifat akademis guna mencapai gelar Sarjana Hukum dengan ketentuan kurikulum Fakultas Hukum Universitas Jember.

2. Sebagai sarana untuk menerapkan ilmu dan pengetahuan hukum yang telah diperoleh dari perkuliahan yang bersifat teoritis dengan praktik yang terjadi di masyarakat.
3. Menambah pengalaman dan memberikan sumbangan pemikiran yang berguna bagi kalangan umum, para mahasiswa fakultas hukum dan almamater.

### 1.3.2 Tujuan Khusus

Tujuan khusus yang ingin di capai adalah :

1. Untuk mengkaji pengaturan klaim atas hak cipta dalam *General Public License* pada *Linux* terkait ketentuan Undang – Undang Hak Cipta Amerika Serikat dan di Indonesia.
2. Bagaimana ketentuan pembatasan dan pengecualian atas hak cipta pada *General Public License* pada *Linux* yang diatur dalam Undang – Undang Hak Cipta Amerika Serikat dan di Indonesia.
3. Untuk mengkaji perbandingan *General Public License* pada *Linux* menurut ketentuan Undang - Undang Hak Cipta Indonesia dan Amerika Serikat.

## 1.4 Metode Penelitian

Metode penelitian merupakan cara kerja bagaimana menemukan atau memperoleh atau menjalankan suatu kegiatan untuk memperoleh hasil yang konkrit. Penggunaan metode penelitian hukum dalam penulisan skripsi ini dapat digunakan untuk menggali, mengolah dan merumuskan bahan-bahan hukum yang diperoleh sehingga mendapat kesimpulan yang dapat dipertanggungjawabkan secara ilmiah. Metode yang tepat diharapkan dapat memberikan alur pemikiran secara berurutan dalam usaha pencapaian pengkajian.

### 1.4.1 Tipe Penelitian

Tipe penelitian yang dipergunakan adalah yuridis normatif *(Legal Research)*, yaitu penelitian yang difokuskan untuk mengkaji penerapan kaidah-kaidah atau norma-norma dalam hukum positif yang berlaku. Tipe penelitian yuridis normatif dilakukan dengan cara mengkaji berbagai aturan hukum yang bersifat formil seperti undang-

undang, peraturan-peraturan serta literatur yang berisi konsep-konsep teoritis yang kemudian dihubungkan dengan permasalahan yang akan dibahas dalam skripsi ini.[4]

### 1.4.2 Pendekatan Masalah

Penelitian hukum memiliki beberapa pendekatan yang dapat digunakan untuk mendapatkan informasi dari berbagai aspek mengenai isu yang sedang dicoba untuk dicari jawabannya. Pendekatan yang digunakan oleh penulis yaitu pendekatan undang-undang *(statute approach) ,* dimana pendekatan ini dilakukan dengan menelaah semua undang-undang dan regulasi yang bersangkut paut dengan isu hukum yang sedang ditangani. Hasil dari telaah merupakan suatu argumen untuk memecahkan isu hukum yang dihadapi oleh penulis.[5]

### 1.4.3 Bahan Hukum

Bahan hukum merupakan sarana dari suatu penulisan yang digunakan untuk memecahkan permasalahan yang ada sekaligus memberikan preskripsi mengenai apa yang seyogyanya. Adapun bahan hukum yang digunakan dalam penulisan skripsi ini adalah bahan hukum primer, bahan hukum sekunder dan bahan non hukum.

**a. Bahan hukum primer**

Bahan hukum primer merupakan bahan hukum yang bersifat *autoritatif* yang artinya mempunyai otoritas. Bahan-bahan hukum primer ini terdiri dari perundang-undangan, catatan-catatan resmi atau risalah dalam pembuatan perundang-undangan dan putusan-putusan hakim.[6] Bahan hukum primer yang mengikat berupa peraturan perundang-undangan yang berlaku, yaitu:

1. Undang – Undang Nomor 19 Tahun 2002 tentang Hak Cipta. (Lembaran Negara Republik Indonesia Tahun 2002 Nomor 85, Tambahan Lembaran Negara Republik Indonesia Nomor 4220).
2. Keputusan Presiden RI No. 18 Tahun 1997 tentang Pengesahan *Berne Convention For The Protection Of Literary and Artistic Works.*

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[4] Peter Mahmud Marzuki. 2010. *Penelitian Hukum,* Jakarta: Kencana Predana Media Group. Hal. 29
[5] *Ibid.* Hal.93
[6] *Ibid.* Hal.141

3. Keputusan Presiden RI No.19 Tahun 1997 tentang Pengesahan *WIPO Copyrights Treaty.*
4. *United State Code Title 17 Chapter 1 Sub Chapter 117 dan Chapter 2.*
5. *WIPO Copyright Treaty.*
6. *TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement.*

**b. Bahan hukum sekunder**

Bahan hukum sekunder berupa semua publikasi tentang hukum yang bukan merupakan dokumen-dokumen resmi. Publikasi tentang hukum meliputi buku-buku teks, kamus-kamus hukum, jurnal-jurnal hukum dan komentar-komentar atas putusan pengadilan sehingga dapat mendukung, membantu melengkapi dan membahas masalah-masalah yang timbul dalam skripsi ini.[7]

**c. Bahan non hukum**

Bahan non hukum sebagai penunjang dari sumber bahan hukum primer dan bahan hukum sekunder, bahan hukum yang memberikan petunjuk maupun memberikan penjelasan terhadap bahan hukum primer dan bahan hukum sekunder, yaitu data yang diambil dari internet, dan kamus.

### 1.4.4 Analisis Bahan Hukum

Proses analisis bahan hukum merupakan proses menemukan jawaban dari pokok permasalahan. Proses ini dilakukan dengan cara:[8]

1. Mengidentifikasi fakta hukum dan mengeliminir hal-hal yang tidak relevan untuk menetapkan isu hukum yang hendak dipecahkan;
2. Pengumpulan bahan-bahan hukum dan sekira dipandang mempunyai relevansi juga bahan-bahan non hukum;
3. Melakukan telaah atas permasalahan yang akan dibahas yang diajukan berdasarkan bahan-bahan yang telah dikumpulkan;
4. Menarik kesimpulan dalam bentuk argumentasi yang menjawab permasalahan yang ada;

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[7] *Ibid.* Hal 141
[8] *Ibid.* Hal.171

5. Memberikan preskripsi berdasarkan argumentasi yang telah dibangun didalam kesimpulan.

Hasil analisis penelitian tersebut kemudian dibahas untuk mendapatkan pemahaman atas permasalahan sehingga dari pembahasan tersebut dapat ditarik kesimpulan yang dapat dipertanggungjawabkan dengan menggunakan metode *deduktif*, yaitu dengan cara pengembalian dari kesimpulan dari pembahasan yang bersifat umum menjadi kesimpulan yang bersifat khusus. Dengan demikian, maka dapat dicapai tujuan yang diinginkan didalam penulisan skripsi, yaitu untuk menjawab pertanyaan yang telah dirumuskan. Sehingga pada akhirnya penulis dapat memberikan preskripsi mengenai apa yang seharusnya dilakukan dan dapat diterapkan. Bahan hukum sekunder, yang berupa buku-buku teks, hasil penelitian dan komentar-komentar atas putusan pengadilan yang terkait dengan permasalahan yang dibahas.[9]

[9] *Ibid.* Hal.206-209

# BAB II
# TINJAUAN PUSTAKA

## 2.1 Sistem *Linux*

### 2.1.1 Sejarah *Linux*

*Linux* adalah nama yang diberikan kepada sistem operasi komputer bertipe Unix. *Linux* merupakan salah satu contoh hasil pengembangan perangkat lunak bebas dan sumber terbuka utama. Seperti perangkat lunak bebas dan sumber terbuka lainnya pada umumnya, kode sumber *Linux* dapat dimodifikasi, digunakan dan didistribusikan kembali secara bebas oleh siapa saja. Nama "*Linux*" berasal dari nama pembuatnya, yang diperkenalkan tahun 1991 oleh Linus Torvalds. Sistemnya, peralatan sistem dan pustakanya umumnya berasal dari sistem operasi GNU, yang diumumkan tahun 1983 oleh Richard Stallman. Kontribusi GNU adalah dasar dari munculnya nama alternatif GNU/*Linux*.[10]

*Linux* pada awalnya dibuat oleh seorang mahasiswa Finlandia yang bernama Linus Torvalds. Dulunya *Linux* merupakan proyek hobi yang diinspirasikan dari Minix, yaitu sistem UNIX kecil yang dikembangkan oleh Andrew Tanenbaum. *Linux* versi 0.01 dikerjakan sekitar bulan Agustus 1991. Kemudian pada tanggal 5 Oktober 1991, Linus Torvalds mengumumkan versi resmi *Linux*, yaitu versi 0.02 yang hanya dapat menjalankan *Shell Bash (GNU Bourne Again Shell)* dan *gcc (GNU C Compiler)*.[11]

MINIX, sebuah sistem bertipe Unix yang ditujukan untuk penggunaan akademis dirilis oleh Andrew S. Tanenbaum pada tahun 1987. Kode sumber MINIX 1.0 tercantum dalam bukunya *Operating Systems: Design and Implementation*. Walaupun dapat secara mudah didapatkan, modifikasi dan pendistribusian ulang tidak diperbolehkan pada saat itu. Hak cipta dari kode sumbernya termasuk ke dalam hak cipta dari bukunya yang dipublikasikan oleh Prentice Hall. Sebagai tambahan, disain versi 16-bit dari MINIX kemudian tidak secara baik diadaptasikan kepada versi 32-bit dari arsitektur Intel 386 yang murah dan populer yang digunakan secara luas di komputer pribadi.

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[10] Dikutip dari http://id.wikipedia.org/wiki/*Linux* diakses 04 februari 2013.
[11] R. Anton Raharja, dkk. 2001. *Open source Campus Agreemen Modul Pelatihan Pengenalan Linux*, Bandung :Telematics Indonesia. Hal. 2

Tahun 1991, Torvalds mulai bekerja untuk membuat versi non-komersial pengganti MINIX sewaktu ia belajar di Universitas Helsinki. Hasil kerjanya itu yang kemudian akan menjadi kernel *Linux*. Pada tahun 1992, Tanembaum menulis sebuah artikel di Usenet, mengklaim bahwa *Linux* sudah ketinggalan zaman. Dalam artikelnya, ia mengkritik *Linux* sebagai sebuah sistem operasi dengan rancangan monolitik dan terlalu terpaku dengan arsitektur x86 sehingga tidak bersifat *portable*, di mana digambarkannya sebagai sebuah kesalahan mendasar. Tanenbaum menyarankan bahwa mereka yang menginginkan sebuah sistem operasi modern harus melihat kepada sebuah rancangan yang berdasarkan kepada model mikrokernel. Tulisan tersebut menekankan tanggung jawab Torvalds yang berujung kepada sebuah debat tentang rancangan kernel monolitik dan mikrokernel.

Di Suoen Tasavalta, Republik Finlandia, seorang mahasiswa bernama Linus Torvalds mengikuti mata kuliah Unix dan bahasa pemrograman C. Saat itu Linus menggunakan sistem operasi mini berbasiskan Unix bernama Minix. Linus merasa bahwa Minix mempunyai banyak kelemahan, dan Ia berkeyakinan mampu untuk membuat lebih baik dari itu. Pada usia 23, Linus mencoba untuk merubah kernel Minix dan menjalankannya di mesin Intel x86. Sekarang *Linux* adalah sistem UNIX yang lengkap, bisa digunakan untuk jaringan (*networking*), pengembangan *Software*, dan bahkan untuk keperluan sehari-hari. *Linux* sekarang merupakan sistem operasi alternatif yang jauh lebih murah jika dibandingkan dengan sistem operasi komersial, dengan kemampuan yang setara atau bahkan lebih. *Linux* bukan lagi suatu sistem operasi turunan Unix yang berbasis pada teks, tapi sudah berubah menjadi sistem operasi yang memiliki GUI yang lebih menarik dan fleksibel daripada Microsoft *Windows*.

*Linux* merupakan sistem operasi bertipe Unix modular. *Linux* memiliki banyak desain yang berasal dari disain dasar Unix yang dikembangkan dalam kurun waktu 1970-an hingga 1980-an. *Linux* menggunakan sebuah kernel monolitik, kernel *Linux* yang menangani kontrol proses, jaringan, periferal dan pengaksesan sistem berkas. *Device driver telah* terintegrasi ke dalam kernel.

*Linux* itu sendiri sebenarnya adalah inti sistem operasi, yaitu kernel. Kernel adalah program yang bertindak sebagai jantung Sistem Operasi. Kernel menyediakan antarmuka

program dengan perangkat keras, bertugas menjalankan dan menghentikan program – program lainnya, mengatur akses memori dan akses jaringan.[12]

Banyak fungsi-fungsi tingkat tinggi di *Linux* ditangani oleh proyek-proyek terpisah yang berintegrasi dengan kernel. *Userland* GNU merupakan sebuah bagian penting dari sistem *Linux* yang menyediakan shell dan peralatan-peralatan yang menangani banyak fungsi-fungsi dasar sistem operasi. Di atas kernel, peralatan-peralatan ini membentuk sebuah sistem *Linux* lengkap dengan sebuah antarmuka pengguna grafis yang dapat digunakan, umumnya berjalan di atas *X Window System*.

Sejarah *Linux* berkaitan dengan GNU. Proyek GNU yang mulai pada 1984 memiliki tujuan untuk membuat sebuah sistem operasi yang kompatibel dengan Unix dan lengkap dan secara total terdiri atas perangkat lunak bebas. Tahun 1985, Richard Stallman mendirikan Yayasan Perangkat Lunak Bebas dan mengembangkan Lisensi Publik Umum GNU (*GNU General Public License* atau *GNU GPL*). Kebanyakan program yang dibutuhkan oleh sebuah sistem operasi (seperti pustaka, kompiler, penyunting teks, *Shell Unix* dan sistem jendela) diselesaikan pada awal tahun 1990-an, walaupun elemen-elemen tingkat rendah seperti *device driver*, jurik dan kernel masih belum selesai pada saat itu.

Sekarang *Linux* adalah sistem UNIX yang lengkap, bisa digunakan untuk jaringan (*networking*), pengembangan *Software*, dan bahkan untuk sehari – hari. *Linux* telah digunakan di berbagai *domain*, dari sistem benam sampai superkomputer, dan telah mempunyai posisi yang aman dalam instalasi *server web* dengan aplikasi LAMP-nya yang populer. *Linux* sekarang merupakan alternatif OS yang jauh lebih murah jika dibandingkan dengan OS komersial, dengan kemampuan *Linux* yang setara bahkan lebih Lingkungan sistem operasi ini termasuk :[13]

1. Ratusan program termasuk, kompiler, interpreter, editor dan utilitas
2. Perangkat bantu yang mendukung konektifitas, Ethernet, SLIP dan PPP, dan interoperabilitas.
3. Produk perangkat lunak yang reliabel, termasuk versi pengembangan terakhir.

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[12] Tim Asisten Comlabs ITB. 2004. *Menguasai Linux dan Office*. Bandung: ComLabs. Hal 20.
[13] Dikutip dari http://nyontekabis.wordpress.com/2012/06/09/31-kelebihan-*Linux*/ diakses pada 04 februari 2013.

4. Kelompok pengembang yang tersebar di seluruh dunia yang telah bekerja dan menjadikan *Linux* portabel ke suatu platform baru, begitu juga mendukung komunitas pengguna yang beragam kebutuhan dan lokasinya dan juga bertindak sebagai team pengembang sendiri.

*Linux* telah lama dikenal untuk penggunaannya di *server*, dan didukung oleh perusahaan – perusahaan komputer ternama seperti Dell, Hewlett-Packard, IBM, Novell, Oracle Corporation, Red Hat, dan Sun Microsystems. *Linux* digunakan sebagai sistem operasi di berbagai macam jenis perangkat keras komputer, termasuk komputer desktop (*Personal Computer*), superkomputer, dan sistem benam seperti pembaca buku elektronik, sistem permainan video (PlayStation 2, PlayStation 3 dan XBox), telepon genggam dan router. Adapun menurut pengamatan para pengamat teknologi informatika beranggapan kesuksesan *Linux* dikarenakan *Linux* memiliki beberapa kelebihan yang antara lain:

1. Tidak bergantung kepada vendor (*Vendor Independence*).
2. Biaya operasional yang rendah, dan kompatibilitas yang tinggi dibandingkan versi UNIX tak bebas.
3. Faktor keamanan dan kestabilannya yang tinggi dibandingkan dengan sistem operasi lainnya seperti Microsoft *Windows*. Ciri-ciri ini juga menjadi bukti atas keunggulan model pengembangan perangkat lunak sumber terbuka (*Open source Software*).[14]

Pengembangan kernel *Linux* masih dilanjutkan oleh Torvalds, sementara Stallman mengepalai Yayasan Perangkat Lunak Bebas yang mendukung pengembangan komponen GNU. Selain itu, banyak individu dan perusahaan yang mengembangkan komponen *non GNU*. Komunitas *Linux* menggabungkan dan mendistribusikan kernel, komponen GNU dan *non-GNU* dengan perangkat lunak manajemen paket dalam bentuk distribusi *Linux*.

Sistem operasi *Linux* yang dikenal dengan istilah distribusi *Linux* (*Linux Distribution*) atau distro *Linux* umumnya sudah termasuk perangkat-perangkat lunak pendukung seperti *server web*, bahasa pemrograman, basisdata, tampilan desktop (*Desktop Environment*) (seperti GNOME dan KDE), dan paket aplikasi perkantoran (*Office Suite*) seperti OpenOffice.org, KOffice, Abiword, dan Gnumeric.

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[14] *Ibid*

### 2.1.2 Pengembangan dan Orientasi *Linux*

Pada tahun 1969, Ken Thompson dan Dennis Ritchie (juga adalah developer bahasa C), para peneliti di AT&T Bell Laboratorium Amerika, membuat sistem operasi UNIX, cikal bakal dari *Linux*. UNIX mendapatkan perhatian besar karena merupakan sistem operasi pertama yang dibuat bukan oleh hardware maker. Selain itu juga karena seluruh *source code* dibuat dengan bahasa C, sehingga mempermudah pemindahannya ke berbagai platform.

Dalam waktu singkat UNIX berkembang secara pesat dan terpecah dalam dua aliran: UNIX yang dikembangkan oleh Universitas Berkeley dan yang dikembangkan oleh AT&T. Setelah itu mulai banyak perusahaan yang melibatkan diri, dan terjadilah persaingan yang melibatkan banyak perusahaan untuk memegang kontrol dalam bidang sistem operasi. Persaingan ini menyebabkan perlu adanya standarisasi. Dari sini lahirlah proyek POSIX yang dimotori oleh IEEE (*The Institute of Electrical and Electronics Engineers*) yang bertujuan untuk menetapkan spesifikasi standar UNIX. Akan tetapi, standarisasi ini tidak meredakan persaingan. Sejak saat itu, muncul berbagai macam jenis UNIX.

Salah satu diantaranya adalah MINIX yang dibuat oleh A. S. Tanenbaum untuk tujuan pendidikan. *Source code* MINIX inilah yang oleh Linus Torvalds, seorang mahasiswa Universitas Helsinki, kemudian dijadikan sebagai referensi untuk membuat sistem operasi baru yang gratis dan yang source codenya bisa diakses oleh umum. Sistem operasi ini kemudian diberi nama *Linux*. Dalam membangun *Linux*, Linus menggunakan tool – tool dari *Free* Foundation *Software* yang berlisensi GNU. Kemudian untuk menjadikan *Linux* sebuah sistem operasi yang utuh, dimasukkan program-program yang juga berlisensi GNU.

Secara teknis dan singkat dapat dikatakan, *Linux* adalah suatu sistem operasi yang bersifat multi user dan multitasking, yang dapat berjalan di berbagai platform, termasuk prosesor INTEL 386 dan yang lebih tinggi. Sistem operasi ini mengimplementasikan standard POSIX. *Linux* dapat berinteroperasi secara baik dengan sistem operasi yang lain, termasuk Apple, Microsoft dan Novell.

Berawal dari sistem operasi Unix dikembangkan dan diimplementasikan pada tahun 1960-an dan pertama kali dirilis pada 1970. Faktor ketersediaannya dan

kompatibilitasnya yang tinggi menyebabkannya dapat digunakan, disalin dan dimodifikasi secara luas oleh institusi-institusi akademis dan pada pebisnis.

Pada tanggal 9 Mei 1996, TUX diresmikan sebagai maskot *Linux* yang dibuat oleh Larry Ewing sesuai dengan pernyataan "*Linus likes penguins*". Nama TUX sendiri diambil dari Trovalds Unix untuk menghormati Linus Trovalds sebagai pengembang *Linux*. Pada awalnya *Linux* diluncurkan dibawah lisensi yang melarang komersialitas. Tetapi pada perkembangannya, Linus Trovalds mengubah lisensinya menjadi GNU *General Public License*. Lisensi mengijinkan distribusi atau bahkan penjualan versi *Linux* yang sudah dimodifikasi tetapi dengan catatan bahwa semua distribusi tersebut haras dibawah lisensi GNU GPL dan harus dengan *source code* programnya. *Linux* memiliki beberapa kelebihan setara dengan UNIX, antara lain:

1. Jalannya proses dengan urutan yang cepat dalam satu program (*Multi Thread*)
2. Satu program dapat diakses lebih dari satu pengguna bersamaan (*Multi User*)
3. Layaknya penggunaan dua CPU atau lebih (*Multi Processing*)
4. Manajemen Memori yang bagus
5. Sekuritas
6. File Sistem stabil
7. Ketersedian *source code*
8. Tersedia dalam versi *livecd*

*Linux* kernel dan sebagian besar perangkat lunak GNU menggunakan GNU *General Public License* (GPL) sebagai basis lisensinya. GPL mengharuskan siapapun yang mendistribusikan kernel *Linux* harus membuat kode sumber (dan semua modifikasi atas itu) tersedia bagi pengguna dengan kriteria yang sama. Tahun 1997, Linus Torvald menyatakan, bahwa menjadikan *Linux* berbasis GPL sungguh merupakan hal terbaik yang pernah dilakukannya. Komponen penting lain dalam sistem *Linux* diijinkan menggunakan lisensi selain dari GPL; banyak pustaka menggunakan GNU Lesser *General Public License* (LGPL), varian GPL yang lebih moderat, dan sistem *X Window System* menggunakan *MIT License.*

Kode sumber *Linux* yang bersifat bebas inilah yang membuat perkembangan *Linux* semakin cepat. Banyak individu ataupun organisasi yang berlomba-lomba membuat sistem sesuai dengan kebutuhan mereka. Inilah yang membuat banyak sekali

distribusi *Linux* (atau yang lebih dikenal dengan Distro *Linux*) saat ini. Contoh-contoh distribusi *Linux* seperti Red Hat, Debian, Fedora, Slackware, OpenSuSE dan banyak lagi. Perkembangan GUI (*Graphical User Interface*)-nya-pun berjalan cepat. *Linux* yang awalnya hanya bermode text, sekarang telah dapat dinikmati dengan berbagai macam desktop interface menarik seperti GNOME, KDE, Xfce, OpenBox, LXDE yang tampilannya tak kalah menarik dari OS dengan GUI lainnya. Macam - macam distribusi tersebut antara lain dijelaskan sebagai berikut :[15]

1. DEBIAN GNU / *LINUX* ( http://www.debian.org/)

Debian adalah sistem operasi berbasis kernel *Linux*. Debian termasuk salah satu sistem operasi *Linux* yang bebas untuk dipergunakan dengan menggunakan lisensi GNU. Debian adalah 'kernel independen', yaitu sistem operasi Debian dikembangkan murni tanpa mendasarkan pada sistem operasi yang telah ada. Proyek Debian tumbuh lambat pada awalnya dan merilis versi 0.9x di tahun 1994 dan 1995. Pengalihan arsitektur ke selain i386 dimulai ditahun 1995. Versi 1.x dimulai tahun 1996. Ditahun 1996, Bruce Perens menggantikan Ian Murdoch sebagai Pemimpin Proyek. Dalam tahun yang sama pengembang debian Ean Schuessler, berinisiatif untuk membentuk Debian Social Contract dan Debian *Free Software Guidelines*, memberikan standar dasar komitmen untuk pengembangan distribusi debian. Dia juga membentuk organisasi "Software in Public Interest" untuk menaungi debian secara legal dan hukum.[16]

2. UBUNTU ( http://www.ubuntu.org/ )

Ubuntu adalah sistem operasi lengkap berbasis *Linux*, tersedia secara bebas dan mempunyai dukungan baik yang berasal dari komunitas maupun tenaga ahli profesional. Ubuntu sendiri dikembangkan oleh komunitas sukarelawan Ubuntu dan kami mengundang Anda untuk turut serta berpartisipasi mengembangkan Ubuntu

UBUNTU adalah salah satu distribusi *Linux* yang berbasiskan pada Debian. Proyek Ubuntu disponsori oleh Canonical Ltd (perusahaan milik Mark Shuttleworth). Nama Ubuntu diambil dari nama sebuah konsep ideologi di Afrika Selatan. " *UBUNTU* " berasal dari bahasa kuno Afrika, yang berarti rasa perikemanusian terhadap sesama manusia. *UBUNTU* cocok digunakan baik untuk desktop maupun *server*. Ubuntu saat ini

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[15] Dikutip dari http://informasi-dunia-tik.blogspot.com/2012/03/sejarah-dan-perkembangan-*Linux*.html diakses pada 04 februari 2013.
[16] *Ibid*

mendukung berbagai arsitektur komputer seperti PC ( Intel x86 ), PC 64-bita ( AMD64 ), PowerPC ( Apple iBook dan Powerbook, G4 dan G5 ), Sun UltraSPARC dan T1 ( Sun Fire T1000 dan T2000. UBUNTU menyertakan lebih dari 16.000 buah perangkat lunak, dan untuk instalasi desktop dapat dilakukan dengan menggunakan satu CD saja. Ubuntu menyertakan semua aplikasi standar untuk desktop mulai dari pengolah kata, aplikasi lembar sebar ( spreadsheet ) hingga aplikasi untuk mengakses internet, perangkat lunak untuk *server web*, peralatan untuk bahasa pemrograman dan beragam permainan seru.[17]

3. RED HAT *LINUX* ( http://www.redhat.com/ )

Red hat adalah distro yang sangat cukup terpopuler di kalangan pengembang dan perusahaan *LINUX*. Dukungan – dukungan secara teknis , pelatihan , sertifikasi , aplikasi pengembangan dan bergabungnya para hacker kerdel dan *free Softwar*enya seperti : Alan cox, Michael Johnson, Stephen Tweedie. Menjadikan red hat berkembang cepat dan di gunakan pada perusahaan – perusahaan. Poin terbesar dari distro red hat ini adalah Red hat Package Manager ( RPM ).[18]

4. FEDORA ( http://fedora.org/ )

Fedora merupakan salah satu lagi distro *Linux*. Tanggal 31 Mei 2008, Fedora 7, versi teranyar dari distribusi gratis yang disponsori oleh Red Hat resmi dirilis. Rilis kali ini menjadi yang pertama kalinya digabungkannya komponen Core dan Extra. Karenanya mulai versi ini nama Fedora diubah tanpa embel-embel *Core* lagi. Rilis yang diberi nama alias Moonshine ini merupakan rilis pertama dimana seluruh pengembangannya ditangani oleh komunitas. dan untuk pertama kalinya diperkenalkan Fedora versi Live CD/DVD. Sampai saat tulisan ini diterbitkan versi fullnya baru tersedia untuk DVD. Sementara untuk versi CD hanya tersedia dalam bentuk livecd berbasis KDE atau Gnome.[19]

5. SLACK WARE ( http://www.slackware.com/ )

Slack ware merupakan distro Patrick Volkerding yang pertama kali setelah SLS. Slack ware di kenal lebih dekat dengan gaya UNIX. Sederhana , stabil , mudah di cudtom , dan di desain untuk komputer 389 / 486 atau komputer yang lebih tinggi. Distro ini termasuk distro yang criptic dan manual sekali badi pemula *LINUX*. Tapi dengan menggunakan distro ini, para penggunanya dapat mengetahui banyak cara kerja sistem

[17] *Ibid*
[18] *Ibid*
[19] *Ibid*

dan distro slack ware tersebut, debian adalah salah satu distro selain slack ware yang masuk dalam kategori ini. Sebagian besar aktifitas konfigurasi di slack ware di lakukan secara manual ( tidak ada tool seperti yast pada S.u.S.E atau pun configurasi pada Red Hat )[20]

6. OPEN S.U.S.E ( http://www.suse.com/ )

Open S.U.S.E adalah distro yang populer di jerman dan eropa terkenal akan dukungan driver VGA nya dan Yast S.U.S.E. tersedia secara komersial dan untuk versi GPL nya dapat di install melalui FTP disitus suse. Instalasi berbasis menugrafis dari cd-rom, disket, boot modular, 400 halaman buku referensi, dukungan teknis, dukungan driver driver terutama VGA dan TOOL administrasi sistem suse, yast, membuat beberapa pengguna memilih distro ini. Suse juga terlibat dalam pembuatan X *Server* (*video driver*) untuk proyek X *Free* 86 sehingga X *Server* Distro ini mendukung kartu grafis baru. Suse menggunakan 2 sistem pemaketan yaitu RPM (versi lama) dan SPM, Suse package manager (versi lama).[21]

Menilik besarnya potensi pada *Linux* sebagai sistem operasi terbuka inilah yang membuka jalan bagi sistem operasi berbasis *Linux* ini menjadi berkembang dan melahirkan berbagai distro yang tak terhitung jumlahnya, konsep bebas yang ditanamkan dalam pengembangan *Linux* berdampak sangat besar untuk memacu kreativitas setiap programmer handal untuk menjadikan *Linux* sebagai hasil kreativitas satu sama lainnya dengan cara menonjolkan kelebihan produk distronya masing – masing.

### 2.1.3 Lisensi pada *Linux*

Apabila kita membicarakan mengenai Sistem Operasi *Linux* memiliki sifat lisensi GPL atau GNU *General Public License*, atau sering disebut dengan *copyleft* sebagai lawan dari *copyright*. Lisensi GPL memberikan kebebasan kepada *source code* untuk dimodifikasi dan redistribusi atau memasyarakatkan kembali. Lisensi ini sebenarnya melewati prosedur pendaftaran hak cipta pertama kalinya, tujuannya ialah untuk menghidari kemungkinan seseorang mengambil alih kendali terhadap perangkat lunak

[20] *Ibid*
[21] *Ibid*

tersebut. Kemudian setelah itu *Software* tersebut dibebaskan asal membuka *source code* atau kode asalnya dibebaskan untuk umum, Lisensi ini dicetuskan oleh Richard Stallman.

Sebuah lisensi *open source* merupakan suatu lisensi hak cipta untuk perangkat lunak komputer yang membuat kode sumber tersedia. Hal ini memungkinkan pengguna akhir untuk memeriksa dan memodifikasi kode sumber untuk kustomisasi sendiri dan atau masalah kebutuhan.

Lisensi *open source* juga sering halnya bebas, memungkinkan untuk modifikasi, redistribusi, dan penggunaan komersial tanpa harus membayar penulis asli. Beberapa lisensi *open source* hanya mengizinkan modifikasi kode sumber untuk penggunaan pribadi atau hanya mengizinkan redistribusi non komersial.

Semua lisensi yang demikian biasanya memiliki batasan – batasan tambahan, seperti syarat untuk menjaga nama penulis dan pernyataan hak cipta dalam kode. Satu set populer bebas lisensi perangkat lunak *open source* yang disetujui oleh *Open source* Initiative (OSI) berdasarkan mereka Definisi *Open source* (OSD).

Lisensi pada *Linux* ini Kernel *Linux* terdistribusi di bawah Lisensi Publik Umum GNU (GPL), dimana peraturannya disusun oleh *Free Software* Foundation. *Linux* bukanlah perangkat lunak *domain public*. *Public Domain* berarti bahwa pengarang telah memberikan *copyright* terhadap perangkat lunak mereka, tetapi *copyright* terhadap kode *Linux* masih dipegang oleh pengarang-pengarang kode tersebut. *Linux* adalah perangkat lunak bebas, namun: bebas dalam arti bahwa siapa saja dapat mengkopi, modifikasi, memakainya dengan cara apa pun, dan memberikan kopi mereka kepada siapa pun tanpa larangan atau halangan.[22]

Pada dasarnya Salah satu kelebihan dari *open source* ini adalah dengan tidak mengikuti ketentuan *copyright* pada umumnya karena hak ekonomi dari pemegang Hak Cipta telah dilepas dari semula, sehingga setiap pengguna dapat dengan bebas untuk memperbanyak, mendistribusikan ulang, menyewakan bahkan merubah atau menambah *Source code* dari suatu program.

[22] Dikutip dari http://bebas.vlsm.org/v06/Kuliah/SistemOperasi/BUKU/SistemOperasi-4.X-1/ch09s04.html diakses pada 12 februari 2013.

## 2.2 Lisensi

### 2.2.1 Pengertian Lisensi

Berbicara mengenai lisensi tentunya kita harus tahu terdahulu apa yang dimaksud dengan lisensi. Lisensi adalah izin yang diberikan oleh pemegang hak cipta atau pemegang hak terkait kepada pihak lain untuk mengumumkan dan/atau memperbanyak ciptaannya atau produk hak terkaitnya dengan persyaratan tertentu.[23]

Sedangkan berdasarkan ketentuan Undang – Undang No. 19 Tahun 2002 tentang Hak Cipta Pasal 1 Ayat 14 lisensi adalah izin yang diberikan oleh Pemegang Hak Cipta atau Pemegang Hak Terkait kepada pihak lain untuk mengumumkan dan/atau memperbanyak Ciptaannya atau produk Hak Terkaitnya dengan persyaratan tertentu.

Menurut Black's Law Dictionary. Lisensi diartikan sebagai:[24]

> *a personal privilege to do some particular act or series of acts on land without possessing any estate or interest therein, and is ordinarily revocable at the will of the licensor and is not as- signable. The permission by competent authority to do an act which, without such permission would be illegal, a trespass, a tort, or otherwise not allowable.*

Artinya lisensi adalah suatu bentuk hak untuk melakukan satu atau serangkaian tindakan atau perbuatan yang diberikan oleh mereka yang berwenang dalam bentuk izin, tanpa adanya izin tersebut maka tindakan atau perbuatan tersebut merupakan suatu tindakan terlarang yang tidak sah, yang merupakan perbuatan melawan hukum.

Pengertian lisensi menurut Betsy Ann Toffler dan Jane Imber dalam Dictinary of marketing Terms, diartikan sebagai berikut:[25]

> *Contractual agreement between two business entities in which licensor permits the licensee to use a brand name, patent, other proprietary right, in exchange for a fee or* royalti. *Licensing enables the licensor to profit from the skills, expansion capital, or other capacity of the licensee.*

Artinya lisensi adalah perjanjian persetujuan antara dua entitas bisnis yang mana licensor mengizinkan licensee untuk menggunakan merk, paten dan hak kepemilikan, dengan imbal balik biaya atau royalti. Lisensi memberikan keuntungan pada licensor atas kemampuan, perluasan modal, atau hal lainnya oleh licensee.

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[23] Dikutip Dari http://id.wikipedia.org/wiki/Hak_cipta#Lisensi_Hak_Cipta diakses pada 12 februari 2013.
[24] Henry Campbell Black, MA. 1991. *Black Law Dictionary*. West Publishing Co, St. Paul Mini. Hal.634
[25] Betsy Ann Toffler dan Jane Imber, 1994, *Dictionary of Marketting Terms*, New York: Barrons Educational Series, Inc. dalam Gunawan Widjaya. 2001. *Lisensi*. Jakarta: Raja Grafindo Persada. Hal. 9.

Lisensi dalam pengertian yang lebih lanjut senantiasa melibatkan suatu bentuk perjanjian (kontrak tertulis) dari pemberi lisensi dan penerima lisensi. Perjanjian tersebut juga berfungsi sebagai dan merupakan bukti pemberian izin dari Pemberi izin lisensi kepada Penerima Lisensi untuk menggunakan nama dagang, paten atau hak milik lainnya (Hak atas Kekayaan Intelektual). Pemberian hak untuk memanfaatkan HaKI ini disertai dengan imbalan dalam bentuk pembayaran royalti oleh Penerima Lisensi kepada Pemberi Lisensi.

Melalui lisensi, pengusaha memberikan izin kepada suatu pihak untuk membuat produk yang akan dijual tersebut, namun tidak secara cuma-cuma. Sebagai imbalan dari pembuatan produk dan atau biasanya juga meliputi hak untuk menjual produk yang dihasilkan tersebut, pengusaha yang memberi izin memperoleh pembayaran berupa royalti. Besarnya royalti selalu dikaitkan dengan banyak atau besarnya jumlah produk yang dihasilkan atau dijual dalam kurun waktu tertentu.

### 2.2.2 Macam Lisensi Hak Cipta

Lisensi hak cipta yang akan dibahas dalam hal ini tentu saja adalah macam – macam lisensi hak cipta yang terdapat pada *Software* tentunya mengingat hak cipta sebagai hak ekslusif. Gunawan Widjaja mengemukakan ada 2 (dua) macam bentuk lisensi yang dikenal dalam hukum positif maupun praktek yaitu:[26]

1. Lisensi Umum dan
2. Lisensi Paksa atau Lisensi Wajib.

Lisensi Umum adalah suatu bentuk lisensi yang sudah umum dikenal yaitu lisensi yang timbul karena perjanjian di antara dua pihak yaitu pemberi lisensi dan penerima lisensi untuk dapat melakukan suatu perbuatan hukum tertentu atas hak-hak tertentu seperti terhadap merek, hasil karya cipta, hasil karya desain industri dan lain-lain. Dalam hukum positif Indonesia.

Istilah Lisensi Wajib atau Lisensi Paksa merupakan hasil terjemahan dari "*Compulsory License*." Compulsory Licenses adalah "*An Authorization given by a national authority to a person, without or against the consent of the title-holder, for the exploitation of subject matter protected by a patent or other intellectual property*." Jadi,

[26] Gunawan Widjaja. 2002. *Lisensi atau Waralaba*. Jakarta: Rajawali Pers. Hal. 107

berdasarkan definisi yang dikemukakan di atas dapat diketahui bahwa dalam Linsensi Wajib, seseorang dapat memiliki lisensi (perbolehan atau ijin) untuk melakukan suatu perbuatan hukum tertentu yang berkaitan dengan hak kekayaan intelektual, paten dan lain-lain.

Namun, bukan berdasarkan perjanjian dengan pemilik hak tetapi berdasarkan kewenangan yang diberikan oleh negara atau pejabat yang berwenang. Bahkan, sekalipun pemilik hak tidak memberikan persetujuannya atau bertentangan dengan kehendaknya, negara atau pejabat yang berwenang dapat memberikan lisensi tersebut kepada pihak lain. Maka, dapat dikatakan bahwa pemberian lisensi wajib bagi pemegang hak lisensi tersebut merupakan pemberian lisensi yang bersifat terpaksa. Jadi, sebenarnya lisensi wajib merupakan bentuk lisensi yang diberikan secara tidak suka rela oleh pemilik atau pemegang suatu hak atas kekayaan intelektual tertentu yang dilisensikan secara paksa oleh pejabat yang berwenang.

Menurut Tim Lindsey dkk., lisensi umum dapat dibagi atas 2 (dua) macam bentuk yaitu (a) lisensi non-eksklusif dan (b) lisensi eksklusif.[27] Lisensi non-eksklusif adalah suatu bentuk lisensi yang memberi kesempatan kepada pemilik lisensi yang memberikan lisensi hak kekayaan intelektualnya kepada pemakai lisensi lainnya dan juga untuk menambah jumlah pemakai lisensi dalam daerah yang sama. Jadi, lisensi non-eksklusif dapat diberikan kepada berbagai pihak oleh pemegang atau pemilik lisensi sesuai dengan atau berdasarkan perjanjian. Lisensi seperti ini hanya dapat diperoleh seseorang semata-mata berdasarkan suatu perjanjian dengan pihak pemilik atau pemegang lisensi. Selain lisensi non-eksklusif terdapat lisensi eksklusif. Menurut Tim Lindsey bahwa:[28]

Lisensi Eksklusif adalah sebuah perjanjian dengan pihak lain untuk melisensikan sebagian HKI tertentu kepada penerima lisensi untuk jangka waktu yang ditentukan dan biasanya lisensi diberlakukan untuk daerah yang ditentukan. Pemberi lisensi biasanya memutuskan untuk tidak memberikan HKI tersebut pada pihak lain dalam daerah tersebut untuk jangka waktu berlakunya lisensi kecuali kepada pemegang lisensi eksklusif.

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[27] Tim Lindsey dkk. 2002. *Hak Kekayaan Intelektual Suatu Pengantar*, Bandung: Alumni. Hal. 97
[28] *Ibid.*

Adapun beberapa macam bentuk lisensi dari hak cipta atas *Software* disebutkan Justisiari P.Kusumah bahwa ada beberapa jenis lisensi yang diberikan terhadap suatu *Software*, antara lain:[29]

1. Lisensi Komersial (*Full Version*)

Jenis lisensi komersial adalah lisensi yang diberikan kepada *Software-Software* yang bersifat komersial dan digunakan untuk kepentingan-kepentingan komersial (bisnis). Misalnya : sistem operasi Microsoft *Windows* (98, ME, 200, 2003, Vista), Microsoft Office, PhotoShop, Corel Draw, Page Maker, AutoCAD, beberapa *Software* Anti Virus (Norton Anti, MCAffee, Bitdefender, Kaspersky), *Software* Firewall (Tiny, Zona Alarm, Seagate), dan lain sebagainya. Tidak ada jalan lain yang diperbolehkan untuk mendapatkan lisensi *Software* ini kecuali dengan membayar sejumlah harga yang telah ditetapkan.

2. Lisensi Percobaan (*Shareware License*)

Jenis lisensi percobaan *Software* (*shareware*) adalah jenis lisensi yang diberikan kepada *Software-Software* yang bersifat percobaan (*trial* atau *demo version*) dalam rangka uji coba terhadap *Software* komersial yang akan dikeluarkan sebelum *Software* tersebut dijual secara komersial atau pengguna diijinkan untuk mencoba terlebih dahulu sebelum membeli *Software* yang sebenarnya (*Full Version*) dalam kurun waktu tertentu, misalnya 30 s/d 60 hari.

Termasuk pula dalam lisensi jenis ini terdapat *evaluation* version dimana *Software* yang diluncurkan belum bisa disebut full version, dengan tujuan sebagai evaluasi kinerja *Software* tersebut. Sehingga, user akan memberikan *feedback* kepada developer *Software* yang berguna sebagai penyempurnaan *Software* tersebut, baik dari segi tampilan atau bahkan adanya bug dalam *Software* tersebut. Misalnya saja saat *Windows* 7 versi *evaluation* diujicobakan secara gratis namun hanya berfungsi selama kurang lebih 1 tahun sejak Mei 2009 dan akan berakhir Juni 2010, meskipun sekarang telah diluncurkan versi lengkapnya.

Yang termasuk shareware di antaranya adalah *nagware*, dimana pada *Software* tersebut sering muncul peringatan yang akan hilang jika melakukan registrasi

[29] Kusumah, Justisiari P. 2006. *Makalah seminar : Penegakan KHI dalam pengembangan piranti lunak di Indonesia*. Jakarta.

(membayar), namun *Software* tersebut masih tetap bias digunakan meski belum diregistrasikan. Misalnya, ACDSee (sampai versi 2.42)

3. Lisensi *Software* Terbatas (*Limited License*)

Jenis lisensi terbatas adalah jenis lisensi yang diberikan kepada *Software* – *Software* yang bersifat non komersial atau *freeware* dan digunakan hanya untuk kepentingan-kepentingan non komersial seperti pada instritusi pendidikan (sekolah dan kampus) dan untuk penggunaan pribadi, misalnya antivirus SmadAV yang bukan versi PRO, dan sebagainya.

4. Lisensi Bebas Pakai (*Freeware License*)

Jenis lisensi *freeware* adalah *Software* atau aplikasi yang bersifat gratis. Kita tidak perlu membeli atau memasukkan nomor serial (*key generator*) dari *Software* tersebut, tapi hak cipta tetap milik pembuat *Software*. Kita tidak boleh merubah hak cipta dan isi dari *Software* tersebut, apalagi menjualnya ke orang lain. Dengan kata lain kita hanya boleh memakai saja. Dan sumber kodenya bersifat tertutup, atau *closed source*. Contoh dari aplikasi *freeware* adalah Winamp, Firefox atau Google Chrome, Yahoo Mesenger, Pidgin, dan sebagainya.

*Freeware*, sesuai dengan namanya adalah *Software* yang benar-benar gratis atau bebas untuk digunakan, developer *Software* tidak pernah meminta Anda untuk membayar apapun kepadanya. Dalam beberapa kasus kemampuan *freeware* malah lebih bagus ketimbang *Software* berbayar. Beberapa *freeware* memberikan persyaratan bahwa *Software* tersebut hanya boleh digunakan untuk penggunaan pribadi (*personal*) bukan untuk digunakan untuk keperluan komersil.

5. Jenis lisensi lain (*Open source*)

Jenis lisensi *open source* adalah jenis lisensi yang diberikan kepada *Software* – *Software* yang *source code* penuhnya tersedia bagi siapa pun yang menginginkannya (untuk dimodifikasi) atau menggunakan hak cipta publik yang dikenal sebagai GNU *Public License* (GPL) yang bisa dibaca secara lengkap di http://www.gnu.org.

Adapun prinsip dasar GPL berbeda dengan hak cipta, GPL pada dasarnya berusaha memberikan kebebasan seluas – luasnya bagi pencipta *Software* untuk mengembangkan kreasi perangkatnya dan menyebarkannya secara bebas kemasyarakat umum (publik). Tentunya dalam penggunaan GPL ini kita masih terikat dengan norma,

nilai dan etika. Misalnya sangatlah tidak etis apabila kita mengambil *Software* GPL kemudian mengemasnya menjadi sebuah *Software* komersial dan mengklaim bahwa *Software* tersebut adalah hasil karya atau ciptaannya. Sebagai contoh, dengan menggunakan lisensi GPL sistem operasi *Linux* yang saat banyak beredar di masyarakat *Linux* dapat digunakan secara gratis di seluruh dunia, bahkan listing program-nya (*Source Code*) dalam Bahasa C dari sistem operasi *Linux* tersebut secara terbuka dan dapat diperoleh secara gratis di internet tanpa dikategorikan membajak *Software* dan melanggar hak cipta (HKI).

Lisensi *Software* sangat beragam jenisnya. Berikut ini adalah penyebutan jenis – jenis lisensi *Software*, berikut sedikit penjelasan dari masing-masing lisensi tersebut.

1. *Open atau Select Licence*

Jenis Open Licence atau Select Licence ini adalah jenis lisensi yang diberikan kepada suatu pengguna yang telah membeli atau membayar lisensi untuk penggunaan *Software* tertentu yang akan dipasang (*install*) ke beberapa perangkat komputer yang akan dipergunakan. Biasanya lisensi jenis ini hanya akan ditunjukan oleh satu lembar surat lisensi untuk pemakaian beberapa perangkat komputer. Misalnya pembelian lisensi untuk pemakaian Sistem Operasi Microsoft *Windows* XP Profesional Editions untuk 50 unit perangkat komputer dan ditunjukan hanya dengan satu lembar surat lisensi.

2. *Original Equipment Manufacture (OEM)*

Jenis Open Licence atau Select Licence ini adalah jenis lisensi yang diberikan kepada setiap perangkat yang dibeli secara bersamaan dengan penggunakan *Software*-nya. Misalnya ketika kita membeli sebuah laptop atau notebook yang sudah dilengkapi dengan Sistem Operasi Microsoft *Windows* XP Profesional yang asli (*original*) yang ditunjukan dengan adanya stiker Certificate of Authenticity (COA) pada bagian bawah perangkat laptop atau notebook tersebut.

3. *Full Price (Retail Product)*

Jenis Full Price (Retail Product) ini adalah jenis lisensi yang diberikan kepada setiap pengguna yang telah membeli *Software* secara terpisah dengan perangkat keras (hardware) secara retail. Biasanya pembelian perangkat lunak (*Software*) ini akan dilengkapi dengan satu lembar surat lisensi yang lengkap dengan packaging serta manual book dari *Software* tersebut.

*4. Academic License*

Jenis Academic License ini adalah jenis lisensi yang diberikan kepada setiap institusi pendidikan (sekolah-sekolah atau kampus) dengan harga khusus dan biasanya dengan sejumlah potongan tertentu (non komersial) dan ditunjukan dengan satu lembar surat lisensi yang dapat dipergunakan pada sejumlah perangkat seperti yang tertera pada surat lisensi tersebut. Misalnya pembelian *Software* dari Microsoft Corp yang akan dipergunakan dilingkungan sekolah atau kampus (*Microsoft Volume Licencing*).

5. Lisensi khusus bagi *Independent Software Vendor (ISV)*

Jenis Independen *Software* Vendor (ISV) ini adalah jenis lisensi yang diberikan kepada setiap Independen *Software* Vendor (ISV) untuk pembelian *Software-Software* yangdigunakan untuk pembuatan aplikasi (*Development Tools Software*) dengan harga khusus dan biasanya dengan sejumlah potongan tertentu dan ditunjukan dengan satu lembar surat lisensi yang dapat dipergunakan pada sejumlah perangkat seperti yang tertera pada surat lisensi tersebut. Saat ini perusahaan pembuatan *Software* seperti Microsoft Indonesia sudah mengeluarkan jenis lisensi ini yang khusus diberikan kepada ISV-ISV yang berada di bawah pembinaan Microsoft Indonesia.

### 2.2.3 Lisensi sebagai perjanjian Pengalihan atas Hak Cipta

Hak cipta sebagai benda bergerak mengacu kepada ketentuan Pasal 3 Ayat 1 Undang – Undang no 19 tahun 2002, sedangkan menurut ketentuan undang – undang yang dimaksud dengan benda dalam konteks hukum perdata adalah segala sesuatu yang dapat diberikan/diletakkan suatu hak diatasnya, utamanya yang berupa hak milik. Dengan demikian, yang dapat memiliki sesuatu hak tersebut adalah *subyek hukum*, sedangkan sesuatu yang dibebani hak itu adalah *obyek hukum*, dikatakan bahwa hak cipta sebagai benda bergerak. Dengan demikian, dapat dimiliki dan dialihkan sebagaimana hak milik.

Hak cipta sebagai benda bergerak yang immateriil merupakan bagian dari kekayaan seseorang, maka hak cipta dapat beralih atau dialihkan baik seluruhnya maupun sebagian. Beralihnya atau dialihkannya hak tersebut dapat melalui cara pewarisan, hibah, wasiat, dijadikan milik Negara ataupun melalui perjanjian. Hak cipta tidak bisa dialihkan

secara lisan, harus secara tertulis baik dengan akta otentik maupun dengan akta di bawah tangan.[30]

Memperhatikan pernyataan diatas didalam hak cipta terdapat konsep hak milik atas hak cipta oleh sang pencipta dimana hak tersebut dapat kita pertahankan terhadap pihak lain yang dianggap dapat mengancam hak cipta sebagai hak milik mutlak oleh pencipta.

Pengaturan perlindungan hak milik ini terutama atas program komputer ini telah diatur secara Internasional yang mana kemudian diratifikasi melalui Keputusan Presiden Republik Indonesia. Seperti yang diatur pada ketentuan *TRIPS Agreement Article 10 Section 1* bahwa *Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).* Yang berarti bahwa program komputer, apakah dalam bentuk kode sumber ataupun *object code*, akan dilindungi sama halnya dengan karya sastra didalam Konvensi Berne (1971). Selain itu disinggung pula dalam *WIPO Copyright Treaty Article 4* yang mana bahwa *Computer programs are protected as literary works within the meaning of Article 2 of the Berne Convention. Such protection applies to computer programs, whatever may be the mode or form of their expression.* Yang kurang lebih maknanya program komputer dilindungi layaknya karya sastra dalam pengertian Pasal 2 dari Konvensi Berne. Perlindungan tersebut berlaku untuk program komputer, dalam hal apapun bentuk yang dapat dimengerti.

Pada prinsipnya bahwa seseorang dapat menuntut orang lain/ badan yang melanggar hak ciptanya, juga ditambahkan hak mengadakan perubahan, yang mana izinnya tetap diberlakukan selama ia hidup. Hak – hak yang dapat diserahkan/ dipindahkan tersebut, antara lain:[31]

1. Memperbanyak hasil ciptaan.
2. Mengumumkan hasil ciptaan.
3. Menerjemahkan hasil ciptaan.
4. Mensandiwarakan, baik dalam radio maupun dalam televisi.

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[30] Muhammad Djumhana dkk. 1993. *Hak Milik Intelektual : Sejarah, Teori, dan Prakteknya di Indonesia*, Bandung : Citra Aditya Bakti. Hal. 65

[31] Sophar Maru Hutagalung, S.H., 1994, *Hak cipta : kedudukan dan Peranannya di Dalam Pembangunan*, Jakarta: Akademik Presindo. Hal. 11

5. Dan lain sebagainya.

Sedangkan hak yang tidak dapat diserahkan, yang tetap berada/melekat pada pencipta:

1. Menuntut pelanggaran hak cipta.
2. Izin mengadakan perubahan dan lainnya.

Menilik pada ketentuan *Title* 17 *Chapte*r 2 *Section* 201 *Subsection* d *Number* 1 *United States Code* mengenai pengalihan atas hak milik (*transfer of ownership*) bahwa: *The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.* Dari ketentuan tersebut dapat disimpulkan bahwa kepemilikan atas hak cipta dapat dialihkan seluruh atau sebagiannya secara hukum sebagai hak milik pribadi seseorang. Lebih lanjut implikasi atas ketentuan Pasal ini dalam *United States Code Title* 17 *Section 204 Subsection* a diatur sebagai berikut:

> *A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent.*

Bahwa dalam hal penggandaan maupun penjualan atas program computer dapat dilakukan apabila telah mendapat izin dari pemegang hak cipta atas perangkat lunak tersebut mealui adanya pengalihan hak cipta. Lisensi sebagai bentuk *authorization* dari pemilik hak cipta secara hukum mutlak diperlukan dalam pengalihan atas hak hak cipta. Oleh karenanya lisensi atas hak cipta suatu program komputer pun disusun sebagai perjanjian pengalihan hak atas merek hak cipta.

Pemegang Hak Cipta berhak memberikan lisensi kepada pihak lain berdasarkan Surat Perjanjian Lisensi untuk mengumumkan dan memperbanyak hasil ciptaan guna kepentingan komersial. Kecuali diperjanjikan lain. Jumlah roalti yang wajib dibayarkan berdasarkan kesepakatan kedua belah pihak dengan berpedoman kepada kesepakatan organisasi profesi.[32]

Menurut R.F. Whale, dalam pengalihan hak cipta harus dibedakan antara "*assignment*" (penyerahan) dengan "*agreement to assign*" (perjanjian). Bentuk

[32] Iswi Hariyani. 2010. *Prosedur Mengurus HAKI Yang Benar*. Yogyakarta: Pustaka Yustisia Hal. 73

*assignment* menyebabkan kepemilikan hak cipta berpindah seluruhnya kepada pihak yang mendapat penyerahan. Sedangkan *agreement to assign* adalah bentuk perjanjian, berupa perbuatan hukum seperti jual beli, dan lisensi. Perbedaaan diantara *assignment* dengan lisensi, juga dalam hal hak – hak yang timbul dan pelaksanaannya bila terjadi keadaan:[33]

1. Bankrutnya penerbit,
2. Hak penerbit untuk merubah karya cipta,
3. Bentuk dan tanggung jawab penerbit dalam pembayaran royalti.

Perjanjian Lisensi dilarang memuat ketentuan yang dapat merugikan perekonomian Indonesia atau memuat ketentuan yang mengakibatkan persaingan usaha tidak sehat yang diatur dalam Undang - Undang No. 5 Tahun 1999 Tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak sehat.[34] Konsekuensi yang timbul dari adanya perjanjian tentunya adanya imbal balik atas keuntungan yang diperoleh dari adanya pengalihan hak cipta yang dilakukan oleh pencipta melalui adanya pembayaran royalti atas hak cipta tersebut kepada pencipta sebagai upah atas karya intelektualnya.

### 2.2.4 Non Eksklusif dalam Hak Cipta

Seperti yang sudah disampaikan sebelumnya hak cipta adalah hak eksklusif bagi Pencipta atau Pemegang Hak Cipta untuk mengumumkan atau memperbanyak Ciptaannya, yang timbul secara otomatis setelah suatu ciptaan dilahirkan. Dalam bahasa inggris hak cipta disebut *Copyright* berasal dari kata *right to copy*, hak untuk memperbanyak). Hak Cipta pada dasarnya adalah salah satu bentuk dari hak milik atau hak kekayaaan (*property or asset*), yang karena tercipta dari hasil proses pemikiran dan imajinasi maka Hak Cipta termasuk dalam kategori Hak atas Kekayaan Intelektual (*intellectual property right*).

Dalam perjanjian lisensi, tidak semua komponen dalam Hak Cipta diserahkan oleh Pencipta kepada Pemegang Hak Cipta. Hak moral tetap melekat di Pencipta, yaitu hak untuk tetap dicantumkan nama Pencipta pada Ciptaan dimaksud. Seperti halnya Pencipta berhak untuk meminta agar ciptaannya tidak diubah – ubah atau dimodifikasi.

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[33] Whale, R., 1971, *Copyright: Evolution, Theory, and Practice*, Horlow : Longman, dalam Djumhana dkk. *Loc.Cit*.
[34] Iswi Hariyani. *Op.Cit*.

Sedangkan Pemegang Hak Cipta berdasarkan lisensi tersebut diberikan hak ekonomis serta hak terkait lainnya. Atas diperolehnya hak ekonomis dan hak terkait lainnya ini oleh si Pemegang Hak Cipta, maka si Pencipta berhak mendapat royalti yang besarnya diatur berdasarkan kesepakatan.

Dalam perjanjian lisensi dapat diatur bahwa si Pecinpta dapat memberikan haknya tersebut secara ekslusif (exclusive license) atau pun secara non-ekslusif (*non-exclusive license*). Yang dimaksud *Non-exclusive license* adalah bahwa si Pencipta melisensikan Hak Ciptanya tidak secara khusus pada satu orang atau badan saja, tapi bisa pada beberapa orang atau badan atau organisasi, sehingga Pemegang Hak Cipta untuk Ciptaan yang sama bisa terdiri dari beberapa orang atau badan atau organisasi. Sedangkan yang dimaksud dengan exclusive license adalah bahwa si pemberi Hak Cipta setuju melisensikan penggunaan hak cipta hanya pada satu orang tertentu atau badan tertentu untuk pendistribusian di wilayah tertentu**.**

Lisensi Non Eksklusif adalah suatu bentuk Lisensi yang memberi kesempatan kepada Pemegang Hak Cipta untuk memberikan Lisensi kepada Pemakai Lisensi lainnya dan juga menambah jumlah pemakai Lisensi dalam wilayah yang sama. Konsep dari Non eksklusif inilah yang kemudian dianut oleh *Linux* sebagai *copyleft* yang merupakan kebalikan konsep *copyright* atau hak cipta dimana hak cipta yang dimiliki oleh pencipta bersifat eksklusif. Konsep *copyleft* ini dirancang untuk memastikan kebebasan ciptaan atas program – program komputer dan tidak menerapkan hak eksklusif yang bermotif uang .

*Copyleft* merupakan praktik penggunaan undang-undang hak cipta untuk meniadakan larangan dalam pendistribusian salinan dan versi yang telah dimodifikasi dari suatu karya kepada orang lain dan mengharuskan kebebasan yang sama diterapkan dalam versi – versi selanjutnya kemudian. *Copyleft* diterapkan pada hasil karya seperti perangkat lunak, dokumen, musik, dan seni. Jika hak cipta dianggap sebagai suatu cara untuk membatasi hak untuk membuat dan mendistribusikan kembali salinan suatu karya, maka lisensi *copyleft* digunakan untuk memastikan bahwa semua orang yang menerima salinan atau versi turunan dari suatu karya dapat menggunakan, memodifikasi, dan juga mendistribusikan ulang baik karya, maupun versi turunannya. Dalam pengertian awam, *copyleft* adalah lawan dari hak cipta. Pengarang dan pengembang yang menggunakan

*copyleft* untuk karya mereka dapat melibatkan orang lain untuk mengembangkan *karyanya* sebagai suatu bagian dari proses yang berkelanjutan. Salah satu contoh lisensi *copyleft* adalah GNU *General Public License*.[35]

Seiring gencarnya dorongan penegakan Hak Kekayaan Intelektual di bidang hak cipta, muncul pula "bentuk perlawanan" dengan memperkenalkan istilah *copyleft* sebagai lawan dari *copyright*. Penggunaan istilah *copyleft* sendiri terjadi karena *right* berarti kanan, sementara *left* berarti kiri. Dalam konteks perlawanan tersebut, tidak berarti *copyleft* menentang perlindungan terhadap hak cipta seseorang, hanya *copyleft* memanfaatkan aturan *copyright* untuk tujuan yang bertolak belakang. Artinya, jika *copyright* bertujuan melindungi kepemilikan pribadi dari pembajakan, *copyleft* sebaliknya karena tidak berambisi menjadikannya sebagai milik pribadi, tetapi justru menginginkan agar tetap bebas. Sebagai contoh, dalam karya cipta perangkat lunak mereka yang mendukung *copyleft* berpandangan bahwa perangkat lunak itu harus tetap bebas (*free Software*). Situs GNU merupakan referensi banyak penganut *copyleft*. Di dalamnya dijelaskan bahwa *copyleft* merupakan metode umum untuk membuat sebuah program menjadi perangkat lunak bebas serta menjamin kebebasannya untuk semua modifikasi dan versi-versi berikutnya.[36]

## 2.3 *General Public License*

### 2.3.1 Sejarah *General Public License*

GNU *General Public License* (GNU GPL atau GPL) adalah yang paling banyak digunakan sebagai lisensi perangkat lunak bebas, yang menjamin pengguna akhir (individu, organisasi, perusahaan) kebebasan untuk menggunakan, mempelajari, berbagi (*copy*), dan memodifikasi perangkat lunak. *Software* yang memastikan bahwa hak-hak tersebut dipertahankan disebut perangkat lunak bebas. Lisensi ini awalnya ditulis oleh Richard Stallman dari *Free Software Foundation* (FSF) untuk proyek GNU.

Perencanaan untuk sistem operasi GNU diperkenalkan kepada khalayak ramai pada 27 September 1983, melalui *newsgroup net.unix-wizards* dan *net.usoft* oleh Richard

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[35] Dikutip dari http://id.wikipedia.org/wiki/*Copyleft* pada 19 Februari 2013.

[36] *Hasbir Paserangi.* 2011**.** *Harmonisasi Hukum Hak Cipta Program Komputer Dengan Kultur Hukum Masyarakat Indonesia, Masalah-Masalah Hukum Jilid 40 No. 3 Juli 2011.* Hal. 309

Stallman. Pengembangan perangkat lunak mulai dikembangkan pada 5 Januari 1984, ketika Stallman keluar dari pekerjaannya di Laboratorium Kecerdasan Buatan, Institut Teknologi Massachusetts, jadi mereka tidak dapat mengakui kepemilikan atau mengganggu penyebaran GNU sebagai perangkat lunak bebas. Richard Stallman memilih nama GNU dengan menggunakan permainan kata-kata, termasuk lagu The Gnu.

Tujuannya adalah untuk mewujudkan sistem operasi yang sepenuhnya bebas. Stallman ingin para pengguna komputer bebas, seperti pada era 1960-an dan 1970-an bebas mempelajari kode sumber perangkat lunak yang mereka gunakan, bebas berbagi perangkat lunak dengan orang lain, bebas memodifikasi perilaku perangkat lunak, dan bebas merilis versi-versi perangkat lunak yang mereka modifikasi. Filsafat ini kemudian diumumkan sebagai *GNU Manifesto* pada Maret 1985.

Pengalaman Richard Stallman dengan *Incompatible Timesharing System* (ITS), sistem operasi kuno yang ditulis menggunakan bahasa *assembly* (rakitan) yang menjadi usang karena dihentikannya PDP-10, arsitektur komputer tempat ditulisnya ITS, mengarah kepada suatu keputusan bahwa sistem portabel adalah sebuah keperluan. Oleh karena itulah GNU sebagian besar kompatibel dengan Unix. Di waktu yang sama, Unix telah menjadi sistem operasi tak bebas yang umum dipakai. Perancangan Unix telah terbukti kokoh, dan modular, jadi perancangan tersebut dapat diterapkan kembali bagian demi bagian.

Banyak perangkat lunak yang diperlukan harus ditulis dari *scratch* (goresan awal), tetapi komponen-komponen bebas kompatibel yang ada juga dipakai, misalnya sistem typesetting TeX, dan X Window System. Sebagian besar dari GNU ditulis oleh sukarelawan; pada waktu luangnya, beberapa lagi dibayar perusahaan, lembaga pendidikan, dan organisasi nirlaba lainnya. Pada Oktober 1985, Stallman mendirikan *Free Software Foundation* (FSF). Di penghujung 1980-an dan awal 1990-an, FSF menyewa para pengembang perangkat lunak untuk menulis perangkat-perangkat lunak yang diperlukan GNU.

Karena GNU meraih kemasyhuran, badan-badan usaha yang berminat mulai menyokong pengembangan atau menjual perangkat lunak GNU dan dukungan teknisnya. Yang paling mengemuka dan berjaya dari semua itu adalah Cygnus Solutions, kini bagian dari Red Hat. Perencanaan awal untuk GNU adalah supaya kompatibel dengan

Unix, sambil menambahkan perbaikan yang berguna. Sejak 1990, sistem GNU memiliki editor teks yang ekstensibel (Emacs), compiler optimisasi yang sangat berjaya (GCC), dan sebagian besar pustaka inti dan utilitas distribusi Unix standar. Sebagai tujuannya untuk mewujudkan sistem operasi yang sepenuhnya bebas. Stallman berupaya menggunakan perangkat lunak yang sudah ada ketika hal itu mungkin. Pada 1980-an terdapat sedikit perangkat lunak bebas, tetapi telah ada X Window System untuk tampilan grafis, sistem typesetting TeX, dan kernel mikro Mach. Komponen-komponen ini diintegrasikan ke dalam GNU.

Di dalam *Manifesto GNU*, Stallman menuliskan bahwa sebuah kernel permulaan ada, tetapi ada lebih banyak fitur yang diperlukan untuk mengemulasi Unix. Dia merujuk kepada TRIX, sebuah kernel panggilan prosedur jarak jauh yang dikembangkan di Institut Teknologi Massachusetts, yang para penulisnya telah memutuskan untuk menyebarkannya sebagai perangkat lunak bebas, dan kompatibel dengan Version 7 Unix. Pada Desember 1986, upaya telah dilakukan untuk memodifikasi kernel ini. Tetapi, para pengembang sebenarnya berpendapat bahwa hal ini tidaklah berguna sebagai titik permulaan, terutama karena kernel itu hanya bekerja pada sebuah peti 68000 yang mahal dan tidak jelas dan kemudian harus diportasi ke arsitektur lainnya sebelum dapat digunakan.

Perencanaan dini Projek GNU adalah untuk mengadaptasi kernel BSD 4.4-Lite untuk GNU. Tetapi karena minimnya kerjasama dari para programer Berkeley, sejak 1998 Stallman beralih menggunakan Mach kernel yang dikembangkan di Universitas Mellon Carnegie, kendati rilisnya sebagai perangkat lunak bebas ditunda sampai 1990 sambil para pengembangnya bekerja untuk menghilangkan kode-kode yang patennya menjadi milik AT&T. Thomas Bushnell, arsitek perintis Hurd, berkata di dalam peninjauannya bahwa keputusan untuk memulai sebuah kernel baru sebagai ganti mengadaptasi karya BSD telah cukup memundurkan projek, dan oleh karena itulah projek ini harus menggunakan kernel BSD.

Perancangan kernel ini merupakan permulaan terbesar GNU dari Unix tradisional. Kernel GNU merupakan *Microkernel multiserver*, dan terdiri dari sehimpunan program yang memanggil *server-server* yang memberikan fungsionalitas yang sama sebagai kernel Unix tradisional. Karena kernel mikro Mach, menurut perancangannya, hanya

menyediakan fungsionalitas kernel tingkat rendah, Projek GNU harus mengembangkan bagian-bagian tingkatan yang lebih tinggi dari kernel itu, sebagai kumpulan program-program pengguna. Mulanya, kumpulan ini disebut Alix, tetapi pengembang Thomas Bushnell memanggilnya Hurd, jadi nama Alix dipindahkan ke suatu subsistem dan sebenarnya menghilang sama sekali. Sebenarnya, kemajuan pengembangan Hurd menjadi sangat lamban karena isu-isu teknis yang terus saja muncul.

Meskipun pada 2002 Stallman secara optimistik memperkirakan dirilisnya GNU/Hurd, pengembangan dan perancangan lebih jauh masih saja diperlukan. Rilis terbaru dari Hurd adalah versi 0.2. Versi tersebut cukup stabil, cocok untuk penggunaan di dalam aplikasi-aplikasi non-kritikal. Sejak 2005, Hurd lamban dikembangkan, dan kini merupakan kernel resmi sistem GNU. Ada juga projek yang berjalan dengan cara memportasi sistem GNU ke kernel-kernel FreeBSD, NetBSD, dan OpenSolaris. Setelah kernel *Linux* dapat digunakan dan dialihkan ke lisensi perangkat lunak bebas, kernel itu menjadi host yang paling lazim untuk perangkat lunak GNU. Projek GNU menggulirkan istilah GNU/*Linux* untuk sistem-sistem demikian.[37]

### 2.3.2 Pengertian *General Public License*

GPL adalah sebuah lisensi yang menyatakan bahwa sebuah karya intelektual (biasanya *Software*) bebas dipakai, disalin, diedarkan, bahkan dikembangkan oleh siapapun tanpa harus membayar atau ijin terlebih dulu. GPL atau bila diterjemahkan menjadi Lisensi Publik Umum pertama kali dibuat oleh Richard Stallman untuk proyek – proyek pembuatan *Software* di bawah bendera GNU. GNU sendiri adalah sebuah yayasan pembuat *Software* – *Software* gratis termasuk *Linux*. Seiring perkembangannya, GPL tidak hanya dipakai oleh GNU dan *Linux* saja. Telah ada lebih dari 60.000 aplikasi yang menyatakan dirinya berlisensi GPL. Khusus untuk urusan aplikasi, saat ini telah berdiri *Free Software* Foundation (FSF) yang merupakan perhimpunan pembuat *Software* gratis sedunia. Berbagai ketentuan GPL dituangkan dalam ayat-ayat GPL.

Kesepakatan GPL sendiri saat ini telah mengalami tiga kali penyempurnaan, yang paling akhir adalah ketentuan GPL versi ke 3 (GPLv3). Cara yayasan – yayasan pembuat *Software* tersebut membiayai dirinya adalah biasanya dari dua sumber, yang pertama dari

[37] Dikutip dari http://id.wikipedia.org/wiki/GNU diakses pada 21 Februari 2013.

iklan dan yang kedua dari sumbangan, baik oleh pemakai *Software* maupun perusahaan – perusahaan yang merasa diuntungkan oleh adanya *Software* tersebut. Tanpa ada kesepakatan GPL perkembangan ilmu pengetahuan dan teknologi informasi tidak akan seperti sekarang. Sifat program GPL yang terbuka membuat semua orang dapat mengembangkan dan menyempurnakannya secara bebas. Hasilnya pun luar biasa, banyak *Software* – *Software* GPL yang terbukti lebih sempurna dari pada *Software* – *Software* berbayar, contohnya adalah Firefox atau Opera.

Lisensi GPL memberikan penerima salinan perangkat lunak hak dari perangkat lunak bebas dan menggunakan *copyleft* untuk memastikan kebebasan yang sama diterapkan pada versi berikutnya dari karya tersebut. GPL adalah lisensi *copyleft*, yang berarti bahwa karya turunan hanya dapat didistribusikan di bawah persyaratan lisensi yang sama. GPL adalah lisensi *copyleft* pertama untuk digunakan secara umum. diyakini bahwa *copyleft* yang disediakan oleh GPL merupakan bagian penting dalam keberhasilan sistem berbasis *Linux*, memberikan programmer yang berkontribusi ke kernel jaminan bahwa pekerjaan mereka akan menguntungkan seluruh dunia dan tetap bebas, lebih baik dari dieksploitasi oleh perusahaan perangkat lunak yang tidak akan memberikan sesuatu kembali kepada masyarakat.[38]

[38] Dikutip dari http://en.wikipedia.org/wiki/GNU_General_Public_License diakses pada 22 Februari 2013.

# BAB IV
# PENUTUP

## 4.1 Kesimpulan

Kesimpulan yang dapat diambil berdasarkan hal-hal yang telah diuraikan dalam bab sebelumnya yaitu:

1. Pengaturan klaim atas hak cipta dalam *General Public License* pada *Linux* terkait ketentuan Undang – Undang Hak Cipta Amerika Serikat dan di Indonesia pada dasarnya menyerupai. Kesamaan tersebut terdapat dalam pasal yang tekait lingkup kepemilikan hak cipta, pengaturan hak eksklusif pada hak cipta, ketentuan atas pengalihan atas hak cipta yang dimiliki pencipta dan mengenai *ownership*. Perbedaan ketentuan hak cipta antara hukum hak cipta Indonesia dengan hukum hak cipta Amerika Serikat dapat diketahui dari pengaturan atas klaim apabila perangkat lunak berlisensi GPL melahirkan turunan atas modifikasi pengguna yang dapat sekaligus menjadi pengembang sebagai implikasi atas hak yang diberikannya toleh lisensi. Adapun ketentuan Amerika Serikat diatur jelas mengenai hasil karya turunan namun pengaturan ketentuan hak cipta Indonesia dalam hal ini tidak diatur mengenai hasil karya turunan menyangkut perangkat lunak dalam kasus lisensi GPL ini.
2. Ketentuan pembatasan dan pengecualian atas hak cipta pada *General Public License* dalam *Linux* yang diatur dalam Undang – Undang Hak Cipta Amerika Serikat dan di Indonesia sendiri pada dasarnya relatif meyerupai. Hal ini dapat diketahui dari pengaturan dalam hal penggandaan salinan atas perangkat lunak yang hanya dapat dibuat hanya apabila terdapat kerusakan atau sebagai langkah pencegahan terhadap kemungkinan terjadinya kerusakan pada mesin komputer yang membedakannya hanyalah pada ketentuan amerika terdapat kelonggaran untuk menyewakan, mengalihkan, menjual maupun melakukan adaptasi atas salinan dengan ketentuan terhadap adaptasihanya dapat dilakukan seizin pemegang hak cipta, sedangkan di Indonesia sendiri ketentuan ini sangat dibatasi keras karena hak terkait penyewaan hanya terbatas dimiliki oleh pencipta maupun pemegang hak cipta.

3. Perbandingan *General Public License* pada *Linux* menurut ketentuan Undang - Undang Hak Cipta Indonesia dan Amerika serikat adapun masih memiliki kesamaan karena merupakan ketentuan turunan hasil ratifikasi dari *WIPO Treaty* dan ketentuan *TRIP's Agreement* namun perbedaan mencolok terlihat dari klaim atas hasil karya turunan yang merupakan hasil modifikasi atas program original serta pembatasan atas ruang lingkup salinan dari perangkat lunak komputer, yang memberikan kesan bahwa perlindungan atas hak cipta *open source* di Indonesia masih sangat kurang. Selain itu ketentuan hak cipta Amerika Serikat memperbolehkan penjualan maupun penyewaan salinan perangkat lunak komputer sebagai bagian dari program asli dan memberikan kesempatan atas adaptasi terhadap perangkat lunak selama dengan seizin pencipta maupun pemegang hak cipta. Dalam hal ini terlihat jelas bahwa dalam pengaturan peraturan terkait hak cipta di Indonesia kelebihannya dengan adanya pengaturan yang ketat terkait dengan perangkat lunak komputer, sebenarnya apabila dapat dijalankan secara sungguh – sungguh dapat mengurangi pembajakan atas perangkat lunak komputer yang marak terjadi, sedangkan kekurangan dalam sistem hukum hak cipta Indonesia dimana *open source* sebagai barang yang ilegal apabila digunakan sesuai dengan yang diharapkan dalam ketentuan yang diatur lisensi GPL sehingga menghambat dan tidak memberikan ruang bagi perkembangan sistem operasi *open source* di Indonesia. Apabila dibandingkan dengan ketentuan hukum hak cipta Amerika Serikat, Kelebihan pengaturan terkait hak cipta dengan ketentuan yang telah ada dan lebih fleksibel dapat secara signifikan mendorong laju perkembangan ilmu pengetahuan. Adapun kekurangan sistem hak cipta Amerika terlihat kurang menaungi pencipta dibandingkan ciptaannya sehingga seperti mengabaikan hak moral dari pencipta itu sendiri.

## 4.2 Saran

Saran yang dapat diberikan dalam skripsi ini:

1. Perangkat lunak dengan lisensi GPL merupakan perangkat lunak yang sebenarnya menguntungkan bagi pemerintah secara ekonomi karena dapat mengurangi pembajakan atas hak cipta perangkat lunak namun sayangnya dalam pengaturan hukumnya masih terdapat banyak kekurangan yang belum dapat mengakomodir

dari sisi perlindungan hak cipta bagi perangkat linak berlisensi *open source* ini. Oleh karenanya dibutuhkan payung hukum yang dapat menutup kekurangan ini.

2. Dalam rangka perlindungan terhadap perangkat lunak berbasis *open source* penting dilakukan penyempurnaan kembali atas Undang – Undang Hak Cipta No. 19 Tahun 2002 Tentang Hak Cipta yang dapat mengakomodasi penggunaan perangkat lunak *open source* melalui pengaturan secara khusus dalam peraturan perundangan terkait hak cipta atas perangkat lunak terkait sehingga dapat digunakan secara bebas dan legal tanpa mengurangi hak – hak pencipta.
3. Pemerintah juga diharapkan dapat merubah paradigma masyarakat melalui pembaharuan atas bidang hak cipta yang selama ini terbatas pada sistem operasi *closed source* ke sistem operasi *open source* melalui pengaturan perundang – undangan yang sifatnya lebih terbuka terkait dengan sistem operasi *open source* sehingga dapat merubah pola pikir masyarakat untuk beralih menggunakan sistem operasi *open source*.

DAFTAR BACAAN

## A. Buku


Betsy Ann Toffler, *et all*. 1994. *Dictionary of Marketting Terms*. New York: Barrons Educational Series, Inc

Gunawan Widjaya. 2001, *Lisensi*. Jakarta: Raja Grafindo Persada

Gunawan Widjaja. 2002. *Lisensi atau Waralaba*. Jakarta: Rajawali Pers

Hasbir Paserangi. 2011. *Harmonisasi Hukum Hak Cipta Program Komputer Dengan Kultur Hukum Masyarakat Indonesia*. Masalah-Masalah Hukum Jilid 40 No. 3 Juli 2011.

Henry Campbell Black. MA. 1991. *Black Law Dictionary*. West Publishing Co, St. Paul Mini

Iswi Hariyani. 2010. *Prosedur Mengurus HAKI Yang Benar*. Yogyakarta: Pustaka Yustisia

Wodetzki, Jamie.1995. *Copyright Issues for Special Libraries.* Synergy : Sydney.

Karjono. 2012. *Perjanjian Lisensi Pengalihan Hak Cipta Program Komputer.* Bandung:ALUMNI.

Kusumah, Justisiari P. 2006. *Makalah seminar : Penegakan KHI dalam pengembangan piranti lunak di Indonesia*. Jakarta

Muhammad Djumhana, dkk. 1993. *Hak Milik Intelektual : Sejarah, Teori, dan Prakteknya di Indonesia,* Bandung : Citra Aditya Bakti

Peter Mahmud Marzuki. 2010. *Penelitian Hukum.* Jakarta, Kencana Predana Media Group

R. Anton Raharja, dkk. 2001. *Open Source Campus Agreemen Modul Pelatihan Pengenalan Linux*. Bandung : Telematics Indonesia

Sophar Maru Hutagalung. 1994. *Hak cipta : kedudukan dan Peranannya di Dalam Pembangunan.* Jakarta: Akademik Presindo

Tim Asisten Comlabs ITB. 2004. *Menguasai Linux dan Office*. Bandung: ComLabs.

Tim Lindsey dkk. 2002. *Hak Kekayaan Intelektual Suatu Pengantar*. Bandung : Alumni

## B. Peraturan Perundang-undangan

Undang – Undang Nomor 19 Tahun 2002 tentang Hak Cipta. (Lembaran Negara Republik Indonesia Tahun 2002 Nomor 85, Tambahan Lembaran Negara Republik Indonesia Nomor 4220).

Keputusan Presiden RI No. 18 Tahun 1997 tentang Pengesahan *Berne Convention For The Protection Of Literary and Artistic Works.*

Keputusan Presiden RI No.19 Tahun 1997 tentang Pengesahan *WIPO Copyrights Treaty.*

*United State Code Title 17 Chapter 1 Sub Chapter 117 dan Chapter 2.*

*WIPO Copyright Treaty.*

*TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement.*

## C. Internet

http://wikuhapsara.blogspot.com/2012/09/jumlah-pengguna-windows-7-kalahkan-xp.html diakses 17 januari 2013 jam 11.13

http://kumpulanteknologi.blogspot.com/2012/05/kelebihan-dan-kekurangan-linux.html diakses 18 januari 2013 jam 08.20

http://teknologi.news.viva.co.id/news/read/309509-ri-masih-bermasalah-dengan-pembajakan-produk diakses 02 februari 2013 jam 21.57

http://id.wikipedia.org/wiki/Linux diakses 04 februari 2013, jam 17.42

http://nyontekabis.wordpress.com/2012/06/09/31-kelebihan-linux/ diakses pada 04 februari 2013, jam 21.34

http://informasi-dunia-tik.blogspot.com/2012/03/sejarah-dan-perkembangan-linux.html diakses pada 04 februari 2013, jam 21.53

http://bebas.vlsm.org/v06/Kuliah/SistemOperasi/BUKU/SistemOperasi-4.X-1/ch09s04.html diakses pada 12 februari 2013 jam 14.43

http://id.wikipedia.org/wiki/Hak_cipta#Lisensi_Hak_Cipta diakses pada 12 februari 2013, jam 14.58

http://id.wikipedia.org/wiki/Copyleft pada 19 Februari 2013, jam 02.36

http://en.wikipedia.org/wiki/GNU_General_Public_License diakses pada 22 Februari 2013, pada jam 00.26

http://id.wikipedia.org/wiki/GNU diakses pada 21 Februari 2013, pada jam 22.30

http://www.gnu.org/licenses/gpl-2.0.html diakses 5 Mei 2013

http://en.wikipedia.org/wiki/Limitations_on_exclusive_rights:_Computer_programs diakses pada 14 mei 2013

# Copyright Law of the United States of America

## and Related Laws Contained in Title 17 of the *United States Code*

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## Chapter 1[1]

## Subject Matter and Scope of Copyright



### § 101 . Definitions[2]

Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

An "anonymous work" is a work on the copies or phonorecords of which no natural person is identified as author.

An "architectural work" is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.[3]

"Audiovisual works" are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

The "Berne Convention" is the Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto.[4]

The "best edition" of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

A person's "children" are that person's immediate offspring, whether legitimate or not, and any children legally adopted by that person.

A "collective work" is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

A "compilation" is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the

resulting work as a whole constitutes an original work of authorship. The term “compilation” includes collective works.

A “computer program” is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.[5]

“Copies” are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “copies” includes the material object, other than a phonorecord, in which the work is first fixed.

“Copyright owner”, with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

A “Copyright Royalty Judge” is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.[6]

A work is “created” when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.

A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a “derivative work”.

A “device”, “machine”, or “process” is one now known or later developed.

A “digital transmission” is a transmission in whole or in part in a digital or other nonanalog format.[7]

To “display” a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

An “establishment” is a store, shop, or any similar place of business open to the general public for the primary purpose of selling goods or services in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.[8]

The term “financial gain” includes receipt, or expectation of receipt, of anything of value, including the receipt of other copyrighted works.[9]

A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than

transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is “fixed” for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

A “food service or drinking establishment” is a restaurant, inn, bar, tavern, or any other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink, in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.[10]

The “Geneva Phonograms Convention” is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland, on October 29, 1971.[11]

The “gross square feet of space” of an establishment means the entire interior space of that establishment, and any adjoining outdoor space used to serve patrons, whether on a seasonal basis or otherwise.[12]

The terms “including” and “such as” are illustrative and not limitative.

An “international agreement” is —

(1) the Universal Copyright Convention;

(2) the Geneva Phonograms Convention;

(3) the Berne Convention;

(4) the WTO Agreement;

(5) the WIPO Copyright Treaty;[13]

(6) the WIPO Performances and Phonograms Treaty;[14] and

(7) any other copyright treaty to which the United States is a party.[15]

A “joint work” is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

“Literary works” are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.

The term “motion picture exhibition facility’’ means a movie theater, screening room, or other venue that is being used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.[16]

“Motion pictures” are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

To “perform” a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

A “performing rights society” is an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.[17]

“Phonorecords” are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “phonorecords” includes the material object in which the sounds are first fixed.

“Pictorial, graphic, and sculptural works” include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.[18]

For purposes of section 513, a “proprietor” is an individual, corporation, partnership, or other entity, as the case may be, that owns an establishment or a food service or drinking establishment, except that no owner or operator of a radio or television station licensed by the Federal Communications Commission, cable system or satellite carrier, cable or satellite carrier service or programmer, provider of online services or network access or the operator of facilities therefor, telecommunications company, or any other such audio or audiovisual service or programmer now known or as may be developed in the future, commercial subscription music service, or owner or operator of any other transmission service, shall under any circumstances be deemed to be a proprietor.[19]

A “pseudonymous work” is a work on the copies or phonorecords of which the author is identified under a fictitious name.

“Publication” is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work “publicly” means—

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

"Registration", for purposes of sections 205(c)(2), 405, 406, 410(d), 411, 412, and 506(e),means a registration of a claim in the original or the renewed and extended term of copyright.[20]

"Sound recordings" are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

"State" includes the District of Columbia and the Commonwealth of Puerto Rico, and any territories to which this title is made applicable by an Act of Congress.

A "transfer of copyright ownership" is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.

A "transmission program" is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

To "transmit" a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent.

A "treaty party" is a country or intergovernmental organization other than the United States that is a party to an international agreement.[21]

The "United States", when used in a geographical sense, comprises the several States, the District of Columbia and the Commonwealth of Puerto Rico, and the organized territories under the jurisdiction of the United States Government.

For purposes of section 411, a work is a "United States work" only if—

(1) in the case of a published work, the work is first published—

(A) in the United States;

(B) simultaneously in the United States and another treaty party or parties, whose law grants a term of copyright protection that is the same as or longer than the term provided in the United States;

(C) simultaneously in the United States and a foreign nation that is not a treaty party; or

(D) in a foreign nation that is not a treaty party, and all of the authors of the work are nationals, domiciliaries, or habitual residents of, or in the case of an audiovisual work legal entities with headquarters in, the United States;

(2) in the case of an unpublished work, all the authors of the work are nationals, domiciliaries, or habitual residents of the United States, or, in the case of an unpublished audiovisual work, all the authors are legal entities with headquarters in the United States; or

(3) in the case of a pictorial, graphic, or sculptural work incorporated in a building or structure, the building or structure is located in the United States.[22]

A "useful article" is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a "useful article".

The author's "widow" or "widower" is the author's surviving spouse under the law of the author's domicile at the time of his or her death, whether or not the spouse has later remarried.

The "WIPO Copyright Treaty" is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.[23]

The "WIPO Performances and Phonograms Treaty" is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland, on December 20, 1996.[24]

A "work of visual art" is—

(1) a painting, drawing, print or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or

(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

A work of visual art does not include—

(A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;

(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

(iii) any portion or part of any item described in clause (i) or (ii);

(B) any work made for hire; or

(C) any work not subject to copyright protection under this title.[25]

A "work of the United States Government" is a work prepared by an officer or employee of the United States Government as part of that person's official duties.

A "work made for hire" is—

(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

In determining whether any work is eligible to be considered a work made for hire under paragraph (2), neither the amendment contained in section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106-113, nor the deletion of the words added by that amendment—

(A) shall be considered or otherwise given any legal significance, or

(B) shall be interpreted to indicate congressional approval or disapproval of, or acquiescence in, any judicial determination,

by the courts or the Copyright Office. Paragraph (2) shall be interpreted as if both section 2(a)(1) of the Work Made for Hire and Copyright Corrections Act of 2000 and section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106-113, were never enacted, and without regard to any inaction or awareness by the Congress at any time of any judicial determinations.[26]

The terms "WTO Agreement" and "WTO member country" have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.[27]

## § 102 . Subject matter of copyright: In general[28]

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

(1) literary works;

(2) musical works, including any accompanying words;

(3) dramatic works, including any accompanying music;

(4) pantomimes and choreographic works;

(5) pictorial, graphic, and sculptural works;

(6) motion pictures and other audiovisual works;

(7) sound recordings; and

(8) architectural works.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

## § 103 . Subject matter of copyright: Compilations and derivative works

(a) The subject matter of copyright as specified by section 102 includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

(b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material.

## § 117 . Limitations on exclusive rights: Computer programs[54]

(a) MAKING OF ADDITIONAL COPY OR ADAPTATION BY OWNER OF COPY.—Notwithstanding the provisions of section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

(2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

(b) LEASE, SALE, OR OTHER TRANSFER OF ADDITIONAL COPY OR ADAPTATION.—Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner.

(c) MACHINE MAINTENANCE OR REPAIR.—Notwithstanding the provisions of section 106, it is not an infringement for the owner or lessee of a machine to make or authorize the making of a copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, if—

(1) such new copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed; and

(2) with respect to any computer program or part thereof that is not necessary for that machine to be activated, such program or part thereof is not accessed or used other than to make such new copy by virtue of the activation of the machine.

(d) DEFINITIONS.—For purposes of this section—

(1) the "maintenance" of a machine is the servicing of the machine in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that machine; and

(2) the "repair" of a machine is the restoring of the machine to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine.

# Chapter 2

## Copyright Ownership and Transfer



### § 201 . Ownership of copyright[1]

(a) INITIAL OWNERSHIP. — Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are coowners of copyright in the work.

(b) WORKS MADE FOR HIRE. — In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title,

and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

(c) CONTRIBUTIONS TO COLLECTIVE WORKS. — Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

(d) TRANSFER OF OWNERSHIP. —

(1) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

(2) Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106, may be transferred as provided by clause (1) and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title.

(e) INVOLUNTARY TRANSFER. — When an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title, except as provided under title 11.[2]

## § 202 . Ownership of copyright as distinct from ownership of material object

Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phonorecord in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.

## § 203 . Termination of transfers and licenses granted by the author[3]

(a) CONDITIONS FOR TERMINATION. — In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by one author, termination of the grant may be effected by that author or, if the author is dead, by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's termination interest. In the case of a grant executed by two or more authors of a joint work, termination of the grant may be effected by a

majority of the authors who executed it; if any of such authors is dead, the termination interest of any such author may be exercised as a unit by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's interest.

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, as follows:

(A) The widow or widower owns the author's entire termination interest unless there are any surviving children or grandchildren of the author, in which case the widow or widower owns one-half of the author's interest.

(B) The author's surviving children, and the surviving children of any dead child of the author, own the author's entire termination interest unless there is a widow or widower, in which case the ownership of one-half of the author's interest is divided among them.

(C) The rights of the author's children and grandchildren are in all cases divided among them and exercised on a per stirpes basis according to the number of such author's children represented; the share of the children of a dead child in a termination interest can be exercised only by the action of a majority of them.

(D) In the event that the author's widow or widower, children, and grandchildren are not living, the author's executor, administrator, personal representative, or trustee shall own the author's entire termination interest.

(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.

(4) The termination shall be effected by serving an advance notice in writing, signed by the number and proportion of owners of termination interests required under clauses (1) and (2) of this subsection, or by their duly authorized agents, upon the grantee or the grantee's successor in title.

(A) The notice shall state the effective date of the termination, which shall fall within the five-year period specified by clause (3) of this subsection, and the notice shall be served not less than two or more than ten years before that date. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

(B) The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(5) Termination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant.

(b) EFFECT OF TERMINATION. — Upon the effective date of termination, all rights under this title that were covered by the terminated grants revert to the author, authors, and other

persons owning termination interests under clauses (1) and (2) of subsection (a), including those owners who did not join in signing the notice of termination under clause (4) of subsection (a), but with the following limitations:

(1) A derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms of the grant after its termination, but this privilege does not extend to the preparation after the termination of other derivative works based upon the copyrighted work covered by the terminated grant.

(2) The future rights that will revert upon termination of the grant become vested on the date the notice of termination has been served as provided by clause (4) of subsection (a). The rights vest in the author, authors, and other persons named in, and in the proportionate shares provided by, clauses (1) and (2) of subsection (a).

(3) Subject to the provisions of clause (4) of this subsection, a further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is signed by the same number and proportion of the owners, in whom the right has vested under clause (2) of this subsection, as are required to terminate the grant under clauses (1) and (2) of subsection (a). Such further grant or agreement is effective with respect to all of the persons in whom the right it covers has vested under clause (2) of this subsection, including those who did not join in signing it. If any person dies after rights under a terminated grant have vested in him or her, that person's legal representatives, legatees, or heirs at law represent him or her for purposes of this clause.

(4) A further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is made after the effective date of the termination. As an exception, however, an agreement for such a further grant may be made between the persons provided by clause (3) of this subsection and the original grantee or such grantee's successor in title, after the notice of termination has been served as provided by clause (4) of subsection (a).

(5) Termination of a grant under this section affects only those rights covered by the grants that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws.

(6) Unless and until termination is effected under this section, the grant, if it does not provide otherwise, continues in effect for the term of copyright provided by this title.

## § 204 . Execution of transfers of copyright ownership

(a) A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent.

(b) A certificate of acknowledgment is not required for the validity of a transfer, but is prima facie evidence of the execution of the transfer if —

(1) in the case of a transfer executed in the United States, the certificate is issued by a person authorized to administer oaths within the United States; or

(2) in the case of a transfer executed in a foreign country, the certificate is issued by a diplomatic or consular officer of the United States, or by a person authorized to administer oaths whose authority is proved by a certificate of such an officer.

## § 205 . Recordation of transfers and other documents[4]

(a) CONDITIONS FOR RECORDATION. — Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document. A sworn or official certification may be submitted to the Copyright Office electronically, pursuant to regulations established by the Register of Copyrights.

(b) CERTIFICATE OF RECORDATION. — The Register of Copyrights shall, upon receipt of a document as provided by subsection (a) and of the fee provided by section 708, record the document and return it with a certificate of recordation.

(c) RECORDATION AS CONSTRUCTIVE NOTICE. — Recordation of a document in the Copyright Office gives all persons constructive notice of the facts stated in the recorded document, but only if —

(1) the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work; and

(2) registration has been made for the work.

(d) PRIORITY BETWEEN CONFLICTING TRANSFERS. — As between two conflicting transfers, the one executed first prevails if it is recorded, in the manner required to give constructive notice under subsection (c), within one month after its execution in the United States or within two months after its execution outside the United States, or at any time before recordation in such manner of the later transfer. Otherwise the later transfer prevails if recorded first in such manner, and if taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, and without notice of the earlier transfer.

(e) PRIORITY BETWEEN CONFLICTING TRANSFER OF OWNERSHIP AND NONEXCLUSIVE LICENSE. — A nonexclusive license, whether recorded or not, prevails over a conflicting transfer of copyright ownership if the license is evidenced by a written instrument signed by the owner of the rights licensed or such owner's duly authorized agent, and if

(1) the license was taken before execution of the transfer; or

(2) the license was taken in good faith before recordation of the transfer and without notice of it.

**ANNEX 1C**

# AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

# AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

*Members,*

*Desiring* to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

*Recognizing*, to this end, the need for new rules and disciplines concerning:

(a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;

(b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;

(c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;

(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and

(e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

*Recognizing* the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

*Recognizing* that intellectual property rights are private rights;

*Recognizing* the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

*Recognizing* also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

*Emphasizing* the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

*Desiring* to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations;

*Hereby agree* as follows:

# PART I

# GENERAL PROVISIONS AND BASIC PRINCIPLES

## *Article 1*

### *Nature and Scope of Obligations*

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.

3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members.[1] In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.[2] Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

## *Article 2*

### *Intellectual Property Conventions*

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).

2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

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[1]When "nationals" are referred to in this Agreement, they shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

[2]In this Agreement, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property; "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works; "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961. "Treaty on Intellectual Property in Respect of Integrated Circuits" (IPIC Treaty) refers to the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. "WTO Agreement" refers to the Agreement Establishing the WTO.

*Article 3*

*National Treatment*

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection[3] of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

*Article 4*

*Most-Favoured-Nation Treatment*

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

(a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;

(b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;

(c) in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;

(d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

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[3]For the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.

*Article 5*

*Multilateral Agreements on Acquisition or Maintenance of Protection*

The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

*Article 6*

*Exhaustion*

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

*Article 7*

*Objectives*

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

*Article 8*

*Principles*

1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

# PART II

# STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

## SECTION 1: COPYRIGHT AND RELATED RIGHTS

### *Article 9*

### *Relation to the Berne Convention*

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6*bis* of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

### *Article 10*

### *Computer Programs and Compilations of Data*

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).

2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

### *Article 11*

### *Rental Rights*

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

### *Article 12*

### *Term of Protection*

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years

from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

*Article 13*

*Limitations and Exceptions*

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

*Article 14*

*Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations*

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.

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

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).

4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.

6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers and producers of phonograms in phonograms.

## SECTION 2: TRADEMARKS

### *Article 15*

### *Protectable Subject Matter*

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

### *Article 16*

### *Rights Conferred*

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

2. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.

3. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or

services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

*Article 17*

*Exceptions*

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

*Article 18*

*Term of Protection*

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

*Article 19*

*Requirement of Use*

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

*Article 20*

*Other Requirements*

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

*Article 21*

*Licensing and Assignment*

Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

## SECTION 3: GEOGRAPHICAL INDICATIONS

*Article 22*

*Protection of Geographical Indications*

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).

3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

*Article 23*

*Additional Protection for Geographical Indications for Wines and Spirits*

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.[4]

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

*Article 24*

*International Negotiations; Exceptions*

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

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[4]Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (*a*) for at least 10 years preceding 15 April 1994 or (*b*) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

(a) before the date of application of these provisions in that Member as defined in Part VI; or

(b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

## SECTION 4: INDUSTRIAL DESIGNS

### *Article 25*

### *Requirements for Protection*

1. Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law.

*Article 26*

*Protection*

1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

3. The duration of protection available shall amount to at least 10 years.

## SECTION 5: PATENTS

*Article 27*

*Patentable Subject Matter*

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.[5] Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. Members may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The

[5]For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms "non-obvious" and "useful" respectively.

provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

*Article 28*

*Rights Conferred*

1. A patent shall confer on its owner the following exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing[6] for these purposes that product;

(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

*Article 29*

*Conditions on Patent Applicants*

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

*Article 30*

*Exceptions to Rights Conferred*

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

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[6]This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6.

*Article 31*

*Other Use Without Authorization of the Right Holder*

Where the law of a Member allows for other use[7] of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

(a) authorization of such use shall be considered on its individual merits;

(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;

(d) such use shall be non-exclusive;

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

(f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;

(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

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[7] "Other use" refers to use other than that allowed under Article 30.

(k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

(l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

(i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

(iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

*Article 32*

*Revocation/Forfeiture*

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

*Article 33*

*Term of Protection*

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.[8]

*Article 34*

*Process Patents: Burden of Proof*

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

[8]It is understood that those Members which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.

(a) if the product obtained by the patented process is new;

(b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.

3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

## SECTION 6: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

### *Article 35*

### *Relation to the IPIC Treaty*

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

### *Article 36*

### *Scope of the Protection*

Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder:[9] importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

### *Article 37*

### *Acts Not Requiring the Authorization of the Right Holder*

1. Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum

[9]The term "right holder" in this Section shall be understood as having the same meaning as the term "holder of the right" in the IPIC Treaty.

equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.

2. The conditions set out in subparagraphs (a) through (k) of Article 31 shall apply *mutatis mutandis* in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

*Article 38*

*Term of Protection*

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2, a Member may provide that protection shall lapse 15 years after the creation of the layout-design.

## SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION

*Article 39*

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices[10] so long as such information:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against

[10]For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

## SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

### *Article 40*

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.

3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.

4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.

# PART III

# ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

## SECTION 1: GENERAL OBLIGATIONS

### *Article 41*

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

## SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

### *Article 42*

### *Fair and Equitable Procedures*

Members shall make available to right holders[11] civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

### *Article 43*

### *Evidence*

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

### *Article 44*

### *Injunctions*

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against

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[11]For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.

such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

*Article 45*

*Damages*

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

*Article 46*

*Other Remedies*

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

*Article 47*

*Right of Information*

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

*Article 48*

*Indemnification of the Defendant*

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

*Article 49*

*Administrative Procedures*

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 3: PROVISIONAL MEASURES

*Article 50*

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;

(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant’s right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a

reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

## SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES[12]

### *Article 51*

### *Suspension of Release by Customs Authorities*

Members shall, in conformity with the provisions set out below, adopt procedures[13] to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods[14] may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are

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[12]Where a Member has dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

[13]It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

[14]For the purposes of this Agreement:

(a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

(b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

*Article 52*

*Application*

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

*Article 53*

*Security or Equivalent Assurance*

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

*Article 54*

*Notice of Suspension*

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

*Article 55*

*Duration of Suspension*

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

*Article 56*

*Indemnification of the Importer and of the Owner of the Goods*

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

*Article 57*

*Right of Inspection and Information*

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

*Article 58*

*Ex Officio Action*

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article 55;

(c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

*Article 59*

*Remedies*

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

*Article 60*

*De Minimis Imports*

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

SECTION 5: CRIMINAL PROCEDURES

*Article 61*

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

## PART IV

## ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED *INTER-PARTES* PROCEDURES

### *Article 62*

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

3. Article 4 of the Paris Convention (1967) shall apply *mutatis mutandis* to service marks.

4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and *inter partes* procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.

5. Final administrative decisions in any of the procedures referred to under paragraph 4 shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

## PART V

## DISPUTE PREVENTION AND SETTLEMENT

### *Article 63*

### *Transparency*

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.

2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful.

The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6*ter* of the Paris Convention (1967).

3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

4. Nothing in paragraphs 1, 2 and 3 shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

### *Article 64*

### *Dispute Settlement*

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.

3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

## PART VI

## TRANSITIONAL ARRANGEMENTS

### *Article 65*

### *Transitional Arrangements*

1. Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.

2. A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.

3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.

5. A Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

### *Article 66*

### *Least-Developed Country Members*

1. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

### *Article 67*

### *Technical Cooperation*

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

# PART VII

# INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

## *Article 68*

### *Council for Trade-Related Aspects of Intellectual Property Rights*

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

## *Article 69*

### *International Cooperation*

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

## *Article 70*

### *Protection of Existing Subject Matter*

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.

2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.

3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.

4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were

commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.

5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.

6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

(a) notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed;

(b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and

(c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).

9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

*Article 71*

*Review and Amendment*

1. The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals

thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

*Article 72*

*Reservations*

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

*Article 73*

*Security Exceptions*

Nothing in this Agreement shall be construed:

(a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests;

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

# WIPO Copyright Treaty

**(adopted in Geneva on December 20, 1996)** [1]

CONTENTS



## Preamble

*The Contracting Parties,*

*Desiring* to develop and maintain the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible,

*Recognizing* the need to introduce new international rules and clarify the interpretation of certain existing rules in order to provide adequate solutions to the questions raised by new economic, social, cultural and technological developments,

*Recognizing* the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works,

*Emphasizing* the outstanding significance of copyright protection as an incentive for literary and artistic creation,

*Recognizing* the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention,

*Have agreed* as follows:

**Article 1**
**Relation to the Berne Convention**

(1) This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention. This Treaty shall not have any connection with treaties other than the Berne Convention, nor shall it prejudice any rights and obligations under any other treaties.

(2) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the Berne Convention for the Protection of Literary and Artistic Works.

(3) Hereinafter, "Berne Convention" shall refer to the Paris Act of July 24, 1971 of the Berne Convention for the Protection of Literary and Artistic Works.

(4) Contracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention.[2]

**Article 2**
**Scope of Copyright Protection**

Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

**Article 3**
**Application of Articles 2 to 6 of the Berne Convention**

Contracting Parties shall apply *mutatis mutandis* the provisions of Articles 2 to 6 of the Berne Convention in respect of the protection provided for in this Treaty.[3]

**Article 4**
**Computer Programs**

Computer programs are protected as literary works within the meaning of Article 2 of the Berne Convention. Such protection applies to computer programs, whatever may be the mode or form of their expression.[4]

**Article 5**
**Compilations of Data (Databases)**

Compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, are protected as such. This protection does not extend to the data or the material itself and is without prejudice to any copyright subsisting in the data or material contained in the compilation.[5]

**Article 6**
**Right of Distribution**

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works through sale or other transfer of ownership.

(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the author.[6]

**Article 7**
**Right of Rental**

(1) Authors of

(i) computer programs;

(ii) cinematographic works; and

(iii) works embodied in phonograms, as determined in the national law of Contracting Parties,

shall enjoy the exclusive right of authorizing commercial rental to the public of the originals or copies of their works.

(2)Paragraph (1) shall not apply

(i) in the case of computer programs, where the program itself is not the essential object of the rental; and

(ii) in the case of cinematographic works, unless such commercial rental has led to widespread copying of such works materially impairing the exclusive right of reproduction.

(3) Notwithstanding the provisions of paragraph (1), a Contracting Party that, on April 15, 1994, had and continues to have in force a system of equitable remuneration of authors for the rental of copies of their works embodied in phonograms may maintain that system provided that the commercial rental of works embodied in phonograms is not giving rise to the material impairment of the exclusive right of reproduction of authors.[78]

**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.[9]

**Article 9**
**Duration of the Protection of Photographic Works**

In respect of photographic works, the Contracting Parties shall not apply the provisions of Article 7(4) of the Berne Convention.

**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.[10]

**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 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.[11]

**Article 13**
**Application in Time**

Contracting Parties shall apply the provisions of Article 18 of the Berne Convention to all protection provided for in this Treaty.

**Article 14**
**Provisions on Enforcement of Rights**

(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

**Article 15**
**Assembly**

(1)

(a) The Contracting Parties shall have an Assembly.

(b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the World Intellectual Property Organization (hereinafter referred to as "WIPO") to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

(2)

(a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 17(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

(3)

(a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and*vice versa*.

(4) The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.

(5) The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

**Article 16**
**International Bureau**

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

**Article 17**
**Eligibility for Becoming Party to the Treaty**

(1) Any Member State of WIPO may become party to this Treaty.

(2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

(3) The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

**Article 18**
**Rights and Obligations under the Treaty**

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

## Article 19
## Signature of the Treaty

This Treaty shall be open for signature until December 31, 1997, by any Member State of WIPO and by the European Community.

## Article 20
## Entry into Force of the Treaty

This Treaty shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

## Article 21
## Effective Date of Becoming Party to the Treaty

This Treaty shall bind:

(i) the 30 States referred to in Article 20, from the date on which this Treaty has entered into force;

(ii) each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;

(iii) the European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to Article 20, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;

(iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

## Article 22
## No Reservations to the Treaty

No reservation to this Treaty shall be admitted.

**Article 23**
**Denunciation of the Treaty**

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

**Article 24**
**Languages of the Treaty**

(1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

(2) An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

**Article 25**
**Depositary**

The Director General of WIPO is the depositary of this Treaty.

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[1] *Entry into force:* March 6, 2002.
*Source:* International Bureau of WIPO.
*Note:* The agreed statements of the Diplomatic Conference that adopted the Treaty (WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions) concerning certain provisions of the WCT are reproduced in endnotes below.

[2] **Agreed statements 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.

[3] **Agreed statements concerning Article 3 :** It is understood that in applying Article 3 of this Treaty, the expression "country of the Union" in Articles 2 to 6 of the Berne Convention will be read as if it were a reference to a Contracting Party to this Treaty, in the application of those Berne Articles in respect of protection provided for in this Treaty. It is also understood that the expression "country outside the Union" in those Articles in the Berne Convention will, in the same circumstances, be read as if it were a reference to a country that is not a Contracting Party to this Treaty, and that "this Convention" in Articles 2(8) , 2*bis*(2) , 3 , 4 and 5 of the Berne Convention will be read as if it were a

reference to the Berne Convention and this Treaty. Finally, it is understood that a reference in Articles 3 to 6 of the Berne Convention to a "national of one of the countries of the Union" will, when these Articles are applied to this Treaty, mean, in regard to an intergovernmental organization that is a Contracting Party to this Treaty, a national of one of the countries that is member of that organization.

[4] **Agreed statements concerning Article 4:** The scope of protection for computer programs under Article 4 of this Treaty, read with Article 2, is consistent with Article 2 of the Berne Convention and on a par with the relevant provisions of the TRIPS Agreement.

[5] **Agreed statements concerning Article 5:** The scope of protection for compilations of data (databases) under Article 5 of this Treaty, read with Article 2, is consistent with Article 2 of the Berne Convention and on a par with the relevant provisions of the TRIPS Agreement.

[6] **Agreed statements concerning Articles 6 and 7:** As used in these Articles, the expressions "copies" and "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

[7] **Agreed statements concerning Articles 6 and 7:** As used in these Articles, the expressions "copies" and "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

[8] **Agreed statements concerning Article 7:** It is understood that the obligation under Article 7(1) does not require a Contracting Party to provide an exclusive right of commercial rental to authors who, under that Contracting Party's law, are not granted rights in respect of phonograms. It is understood that this obligation is consistent with Article 14(4) of the TRIPS Agreement.

[9] **Agreed statements 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) .

[10] **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.

[11] **Agreed statements 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.

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Version 2, June 1991



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code, to be distributed under the terms of Sections 1 and 2 above on a medium customarily used for software interchange; or,

**c)** Accompany it with the information you received as to the offer to distribute corresponding source code. (This alternative is allowed only for noncommercial distribution and only if you received the program in object code or executable form with such an offer, in accord with Subsection b above.)

The source code for a work means the preferred form of the work for making modifications to it. For an executable work, complete source code means all the source code for all modules it contains, plus any associated interface definition files, plus the scripts used to control compilation and installation of the executable. However, as a special exception, the source code distributed need not include anything that is normally distributed (in either source or binary form) with the major components (compiler, kernel, and so on) of the operating system on which the executable runs, unless that component itself accompanies the executable.

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To do so, attach the following notices to the program. It is safest to attach them to the start of each source file to most effectively convey the exclusion of warranty; and each file should have at least the "copyright" line and a pointer to where the full notice is found.

```
one line to give the program's name and an idea of what it does.
Copyright (C) yyyy  name of author

This program is free software; you can redistribute it and/or
modify it under the terms of the GNU General Public License
as published by the Free Software Foundation; either version 2
of the License, or (at your option) any later version.

This program is distributed in the hope that it will be useful,
but WITHOUT ANY WARRANTY; without even the implied warranty of
MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE.  See the
GNU General Public License for more details.

You should have received a copy of the GNU General Public License
along with this program; if not, write to the Free Software
Foundation, Inc., 51 Franklin Street, Fifth Floor, Boston, MA  02110-1301,
USA.
```

Also add information on how to contact you by electronic and paper mail.

If the program is interactive, make it output a short notice like this when it starts in an interactive mode:

```
Gnomovision version 69, Copyright (C) year name of author
Gnomovision comes with ABSOLUTELY NO WARRANTY; for details
type `show w'.  This is free software, and you are welcome
to redistribute it under certain conditions; type `show c'
for details.
```

The hypothetical commands `show w' and `show c' should show the appropriate parts of the General Public License. Of course, the commands you use may be called something other than `show w' and `show c'; they could even be mouse-clicks or menu items--whatever suits your program.

You should also get your employer (if you work as a programmer) or your school, if any, to sign a "copyright disclaimer" for the program, if necessary. Here is a sample; alter the names:

```
Yoyodyne, Inc., hereby disclaims all copyright
interest in the program `Gnomovision'
(which makes passes at compilers) written
by James Hacker.

signature of Ty Coon, 1 April 1989
```

Ty Coon, President of Vice

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Ketika kita berbicara tentang perangkat lunak bebas, kita mengacu kepada kebebasan, bukan harga. Lisensi Publik Umum kami dirancang untuk menjamin bahwa Anda memiliki kebebasan untuk mendistribusikan salinan dari perangkat lunak bebas (dan memberi harga untuk jasa tersebut jika Anda mau), mendapatkan source code atau bisa mendapatkannya jika Anda mau, mengubah suatu perangkat lunak atau menggunakan bagian dari perangkat lunak tersebut dalam suatu program baru yang juga bebas; dan mengetahui bahwa Anda dapat melakukan semua hal ini.

Untuk melindungi hak-hak Anda, kami perlu membuat batasan-batasan yang melarang orang lain untuk dapat menolak hak-hak Anda atau membuat Anda menyerahkan hak-hak Anda tersebut. Batasan-batasan ini diterjemahkan menjadi beberapa tanggung jawab bagi Anda jika Anda mendistribusikan salinan dari suatu perangkat lunak, atau memodifikasinya.

Sebagai contoh, jika Anda mendistribusikan salinan dari suatu program, baik secara gratis atau dengan biaya, Anda harus memberi semua hak-hak Anda kepada si

penerima. Anda juga harus menjamin bahwa si penerima tersebut mendapatkan atau bisa mendapatkan source code-nya.

Kami melindungi hak-hak Anda dengan dua langkah: (1) hak cipta terhadap perangkat lunak tersebut, dan (2) menawarkan Lisensi ini kepada Anda yang memberi Anda izin legal untuk menyalin, mendistribusikan dan/atau memodifikasi perangkat lunak tersebut.

Demi perlindungan bagi si pencipta dan kami juga, kami ingin memastikan bahwa semua orang mengerti bahwa tidak ada garansi bagi perangkat lunak bebas. Jika perangkat lunak tersebut dimodifikasi oleh orang lain dan didistribusikan, kami ingin sang penerimanya mengetahui bahwa apa yang mereka punyai bukanlah perangkat lunak yang aslinya, sehingga masalah apa pun yang ditimbulkan oleh orang lain tidak mencerminkan reputasi pencipta perangkat lunak yang asli.

Terakhir, program bebas apa pun terancam terus menerus oleh hak paten perangkat lunak. Kami ingin menghindari bahaya yang memungkinkan redistributor program yang bebas bisa mendapatkan hak paten untuk dirinya sendiri, yang mengakibatkan program tersebut menjadi tak bebas. Untuk mencegah hal ini, kami telah menyatakan dengan jelas bahwa hak paten apa pun harus dilisensikan bagi semua orang, atau tidak sama sekali.

Berikut adalah ketentuan dan persyaratan yang tepat untuk menyalin, mendistribusikan dan memodifikasi.

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## KETENTUAN DAN PERSYARATAN UNTUK MENYALIN, MENDISTRIBUSIKAN DAN MEMODIFIKASI

**0.** Lisensi ini berlaku untuk program apa pun atau karya lain yang memuat pemberitahuan yang ditempatkan oleh pemegang hak cipta memberitahukan bahwa program atau karya tersebut boleh didistribusikan di bawah persyaratan dari General Public License ini. Sang "Program", di bawah, mengacu pada program atau karya apa pun seperti yang telah disebutkan, dan "karya berdasarkan si Program" berarti si Program itu sendiri atau karya turunan apa pun di bawah hukum hak cipta: yang artinya, suatu karya yang memuat si Program atau bagian darinya, baik itu sama persis atau dengan modifikasi dan/atau diterjemahkan ke dalam bahasa lain. (Mulai dari sekarang, penerjemahan dimasukkan tanpa batas dalam ketentuan "modifikasi".) Setiap pemegang lisensi disebut sebagai "Anda".

Kegiatan selain menyalin, mendistribusikan dan memodifikasi tidak dilingkupi oleh Lisensi ini; kegiatan tersebut berada di luar ruang lingkup Lisensi ini. Kegiatan menjalankan si Program tidak dibatasi, dan keluaran dari si Program dilingkupi hanya jika isinya mempunyai dasar karya yang berbasis si Program tersebut (terlepas dari keluarannya dibuat dengan cara menjalankan si Program atau tidak). Benar atau tidaknya tergantung pada apa yang dilakukan si Program.

**1.** Anda boleh menyalin dan mendistribusikan sama persis dari source code si Program sebagaimana Anda menerimanya, dalam media apa pun, dengan syarat Anda menaruh pemberitahuan yang pantas tentang hak cipta dan penyangkalan terhadap garansi dengan jelas dan sepatutnya pada setiap salinan; menyimpan secara utuh semua pemberitahuan yang mengacu kepada Lisensi ini dan kepada ketiadaan garansi apa pun; dan memberi kepada penerima lainnya sebuah salinan dari Lisensi ini bersama si Program.

Anda boleh memberi harga untuk kegiatan memindahkan salinan secara fisik, dan Anda boleh, sesuai pilihan Anda, menawarkan perlindungan garansi untuk harga tertentu.

**2.** Anda boleh memodifikasi satu atau lebih salinan si Program atau bagian dari si Program yang Anda miliki, sehingga membentuk suatu karya yang berdasarkan si Program, dan menyalin serta mendistribusikan modifikasi atau karya seperti yang telah disebutkan dalam ketentuan pada Bagian 1 di atas, dengan syarat Anda juga memenuhi semua persyaratan ini:

- **a)** Anda harus membuat agar berkas-berkas yang termodifikasi membawa pemberitahuan menyolok yang memberitahukan bahwa Anda telah mengubah berkas-berkas tersebut dan tanggal perubahan tersebut.
- **b)** Anda harus menghasilkan karya yang Anda sebarkan atau edarkan, baik seluruhnya atau sebagian atau di hasilkan dari suatu program atau dari berbagai bagian, untuk dilisensikan secara keseluruhan tanpa biaya kepada seluruh partai ketiga di bawah lisensi tersebut.
- **c)** Jika program yang dimodifikasi saat dijalankan dapat membaca perintah-perintah secara interaktif, Anda harus dapat mewujudkannya, saat memulai menjalankan sesuatu interaktif dengan cara yang paling wajar, mencetak atau menampilkan suatu pengumuman termasuk pemberitahuan hak cipta dan tidak adanya garansi (atau lainnya, yang mengatakan kalau Anda menyediakan garansi, dan pemakai boleh mengedarkan program tersebut berdasarkan suatu kondisi/persyaratan, dan beritahukan kepada mereka bagaimana caranya melihat salinan dari lisensi tersebut. (Pengecualian : Jika program itu sendiri adalah interaktif tapi tidak mencetak pemberitahuan seperti di atas, karya Anda yang berdasarkan program tersebut juga tidak diharuskan mencetak pemberitahuan tersebut.)

Persyaratan-persyaratan ini diperuntukkan untuk karya yang dimodifikasi secara keseluruhan. Jika bagian yang dapat diidentifikasi dari karya tersebut tidak berasal dari suatu program, dan dapat dinyatakan berdiri sendiri dan suatu karya yang terpisah,

maka Lisensi ini, dan bagian-bagiannya, tidak berlaku untuk bagian tersebut saat Anda mengedarkannya sebagai suatu karya yang terpisah. Namun, saat Anda mengedarkan bagian yang sama sebagai bagian dimana karya tersebut merupakan bagian dari program, pengedaran dari yang keseluruhan harus berdasarakan lisensi tersebut, yang perizinannya untuk lisensi yang lain diperluas ke seluruhnya, dan pada setiap bagian tidak peduli siapa yang menulisnya.

Maka, bukanlah tujuan dari bagian ini untuk mengklaim hak-hak atau memamerkan hak-hak Anda untuk bekerja menulis seluruhnya oleh Anda; daripada, tujuannya adalah untuk melatih hak untuk mengendalikan pendistribusian dari karya turunan atau kolektif berdasarkan si Program tersebut.

Sebagai tambahan, agregasi belaka dari karya yang lain tidak berdasarkan dari si Program dengan si Program (atau dengan suatu karya berdasarkan si Program) pada kapasitas penyimpanan atau media pendistribusian tidak membawa karya lainnya di bawah lingkup dari Lisensi tersebut.

**3.** Anda boleh menyalin dan menyalurkan si Program (atau karya yang berdasarkan si Program tersebut, tercantum pada Bagian 1 dan 2) dalam object code atau bentuk yang dapat dijalankan seperti pada ketentuan yang tercantum pada Bagian 1 dan 2 di atas, dengan syarat Anda juga melakukan salah satu dari hal berikut:

- **a)** Menyertakannya dengan source code bersangkutan yang lengkap dan dapat dibaca, yang harus didistribusikan di bawah ketentuan yang tercantum pada Bagian 1 dan 2 di atas pada suatu media yang dipergunakan secara khusus untuk pertukaran perangkat lunak; atau,
- **b)** Menyertakannya dengan penawaran tertulis, yang berlaku untuk setidaknya tiga tahun, untuk memberi pihak ketiga mana pun, dengan suatu harga yang tidak melebihi biaya untuk melakukan pendistribusian sumber, source code bersangkutan yang lengkap dan dapat dibaca, untuk didistribusikan di bawah ketentuan dari Bagian 1 dan Bagian 2 di atas pada suatu media yang dipergunakan secara khusus untuk pertukaran perangkat lunak; atau,
- **c)** Menyertakannya dengan informasi yang Anda terima berhubungan dengan penawaran untuk mendistribusikan source code yang bersangkutan. (Alternatif ini diperbolehkan hanya untuk distribusi non-komersil dan hanya jika Anda memperoleh program dalam bentuk object code atau bentuk yang dapat dijalankan dengan penawaran seperti yang telah disebutkan, menurut Subbagian b di atas.)

Source code dari sebuah karya berarti bentuk yang diinginkan dari pekerjaan untuk memodifikasinya. Untuk sebuah karya yang dapat dijalankan, source code lengkap artinya semua source code untuk semua modul yang dikandungnya, ditambah berkas-berkas definisi yang berhubungan, ditambah script yang digunakan untuk mengendalikan kompilasi dan instalasi dan bentuk yang dapat dijalankannya. Bagaimanapun, sebagai pengecualian, pendistribusian source code tidak diperlukan untuk memasukkan semua komponen yang biasanya didistribusikan (dalam bentuk

source atau biner) bersama dengan komponen utama (kompilator, kernel, dan sebagainya) dari sistem operasi dimana program tersebut berjalan, kecuali komponen tersebut mendampingi bentuk yang dapat dijalankannya. Jika pendistribusian dari bentuk yang dapat dijalankannya dan object code dibuat dengan penawaran akses untuk menyalin dari tempat yang telah ditentukan, maka penawaran akses untuk menyalin source code dari tempat yang sama dihitung sebagai pendistribusian dari source code, walaupun pihak ketiga tidak diharuskan untuk menyalin source code bersama-sama dengan object code.

**4.** Anda tidak boleh menyalin, mengubah, mensublisensikan, atau mendistribusikan si Program tersebut kecuali sebagaimana telah diterangkan pada Lisensi ini. Segala usaha untuk menyalin, mengubah, mensublisensikan, atau mendistribusikan si Program tersebut adalah tidak sah, dan secara otomatis akan membatalkan hak-hak Anda di bawah Lisensi ini. Akan tetapi, mereka yang sudah mendapatkan salinan, atau hak-hak dari Anda di bawah Lisensi ini tidak akan dibatalkan lisensinya selama mereka tetap mematuhi Lisensi ini.

**5.** Anda tidak diharuskan menerima Lisensi ini, karena anda belum menyetujuinya. Tetapi, tidak ada lisensi lain yang memberi anda izin untuk memodifikasi atau mendistribusikan Program tersebut atau turunannya. Kegiatan tersebut dilarang oleh hukum jika anda tidak menerima Lisensi ini. Oleh karena itu, dengan memodifikasi atau mendistribusikan program tersebut (atau hasil kerja berdasarkan program tersebut), berarti Anda menerima Lisensi ini, dan semua ketentuan serta kondisi untuk menyalin, mendistribusikan atau memodifikasi program tersebut atau hasil kerja berdasarkan program tersebut.

**6.** Setiap kali anda mendistribusikan si Program tersebut (atau hasil kerja lain berdasarkan Program tersebut), penerima secara otomatis menerima lisensi dari pemberi lisensi untuk menyalin, mendistribusikan atau memodifikasi si Program tersebut berdasarkan persyaratan dan kondisi yang ada. Anda tidak boleh memberikan pembatasan lain terhadap perilaku penerima terhadap hak-hak yang telah diberikan . Anda tidak bertanggung jawab untuk memaksakan penyesuaian pihak ketiga terhadap Lisensi ini.

**7.** Jika sebagai konsekuensi dari keputusan pengadilan atau pelanggaran paten atau hal yang lainnya (tidak terbatas kepada permasalahan paten), kondisinya tergantung pada anda (jika ada suruhan dari pengadilan, kesepakatan atau yang lainnya) yang berbeda dari Lisensi ini, mereka tidak menerima kesepakatan Lisensi ini. Jika kita tidak bisa menyebarkan agar dapat secara simultan terpuaskan kesepakatan di bawah Lisensi ini dan kesepakatan yang lainnya, kemudian sebagai konsekuensi nya kita tidak dapat mengedarkan seluruh program sama sekali. Sebagai contoh, jika lisensi paten tidak

membolehkan pembayaran royalti (hak pakai) dari program dimana pengguna menerima salinannya secara langsung atau tidak langsung dari Anda, maka satu-satunya jalan untuk Anda memuaskan antara yang menerima salinan dan Lisensi ini adalah untuk menjelaskan keseluruhan distribusi program.

Jika ada bagian dari sini termasuk tidak sah atau tidak dapat diterapkan di bawah keadaan tertentu apa pun juga, keseimbangan dari bagian ini bertujuan untuk menerapkan dan bagian ini sebagai keseluruhan adalah diperuntukkan untuk menerapkan hal yang lainnya.

Ini bukan bermaksud untuk mempengaruhi Anda untuk melanggar paten tertentu atau klaim hak kepemilikan yang lain atau untuk mengadu keabsahan klaim hak kepemilikan apa pun; bagian ini mempunyai maksud dan tujuan untuk melindungi integritas dari sistem pendistribusian perangkat lunak bebas, dimana perangkat lunak itu diimplementasikan oleh praktek lisensi umum. Banyak orang sekarang telah dapat membuat kontribusi umum untuk mendistribusikan penggunaan perangkat lunak dalam sebuah sistem yang terbuka; hal ini tergantung dari si pencipta/penderma jika ia punya keinginan untuk menyebarkan/tidak menyebarkan aplikasi yang ia buat ke masyarakat luas tanpa mengikuti sistem yang berlaku dan pemegang lisensi tidak dapat menentukan pilihan tersebut.

Bagian ini bertujuan untuk membuat sebuah pemahaman yang jelas tentang apa yang dipercayai sebagai akibat dari sisa Lisensi ini.

**8.** Jika distribusi dan/atau penggunaan si Program dibatasi di negara-negara tertentu saja melalui paten atau hak cipta antar muka, pemegang hak cipta orisinil yang menempatkan si Program di bawah Lisensi ini boleh menambahkan batasan pendistribusian geografis secara ekplisit terkecuali negara-negara yang disebut di atas, sehingga distribusi hanya terdapat di dalam atau di antara negara-negara yang diperbolehkan. Dalam kasus semacam itu, Lisensi ini menyertakan limitasi di atas sebagaimana tertulis di dalam tubuh Lisensi ini.

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Setiap versi diberikan nomor versi yang berbeda-beda. Jika si Program menyatakan nomor versi dari Lisensi ini yang diberlakukan dalam Program tersebut dan versi-versi berikutnya dari Program tersebut, Anda memiliki pilihan untuk mengikuti syarat dan kondisi dari versi ini atau salah satu versi berikutnya yang diterbitkan oleh Free Software

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**AKHIR KETENTUAN SERTA PERSYARATANNYA**

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## Cara Menerapkan Ketentuan Ini dalam Program Baru Anda

Jika Anda mengembangkan suatu program baru, dan Anda menginginkan program tersebut menjadi hal yang paling mungkin berguna untuk digunakan oleh masyarakat, jalan paling baik untuk mencapai hal ini adalah dengan membuat program Anda menjadi perangkat lunak bebas dimana semua orang dapat mendistribusikannya kembali dan mengubahnya di bawah ketentuan-ketentuan ini.

Untuk melakukan hal itu, tambahkan pemberitahuan berikut ke program tersebut. Tindakan yang paling aman adalah untuk menambahkan pemberitahuan tersebut ke awal setiap berkas sumber agar dapat dengan efektif menyampaikan tidak termasuknya garansi; dan setiap berkas harus mempunyai setidaknya baris "hak cipta" dan petunjuk dimana pemberitahuan seluruhnya dapat ditemukan.

*satu baris untuk nama program serta ide singkat tentang fungsinya.*
Hak cipta (C) *tahun  nama pencipta*

```
Program ini adalah perangkat lunak bebas; Anda dapat menyebarluaskannya
dan/atau memodifikasinya di bawah ketentuan-ketentuan dari
GNU General Public License seperti yang diterbitkan oleh
Free Software Foundation; baik versi 2 dari Lisensi tersebut, atau (dengan
pilihan Anda) versi lain yang lebih tinggi.


Program ini didistribusikan dengan harapan bahwa program ini akan berguna,
tetapi TANPA GARANSI; tanpa garansi yang termasuk dari DAGANGAN atau
KECOCOKAN UNTUK TUJUAN TERTENTU sekalipun. Lihat
GNU General Public License untuk rincian lebih lanjut.


Anda seharusnya menerima sebuah salinan GNU General Public License beserta
program ini; jika tidak, tulis ke Free Software Foundation, Inc.,
59 Temple Place, Suite 330, Boston, MA  02111-1307  USA
```

Tambahkan juga informasi untuk menghubungi Anda melalui surat elektronik atau surat biasa.

Jika programnya interaktif, buatlah agar program tersebut mengeluarkan pemberitahuan singkat seperti berikut ketika mode interaktif dimulai:

```
Gnomovision versi 69, Hak cipta (C) tahun nama pencipta
Gnomovision TIDAK MEMILIKI GARANSI APA PUN; untuk rincian ketik 'lihat g'.
Program ini adalah perangkat lunak bebas, dan Anda diperbolehkan untuk
menyebarluaskannya dengan syarat-syarat tertentu; ketik 'lihat s' untuk
rincian.
```

Perintah-perintah hipotetis `lihat g' dan `lihat s' seharusnya menunjukkan bagian-bagian yang tepat dari General Public License. Tentu saja, perintah-perintah yang Anda gunakan dapat dipanggil melalui hal yang lain selain `lihat g' dan `lihat s'; perintah-perintah tersebut dapat berupa klik pada tombol mouse atau menu -- apa pun yang menurut Anda sesuai.

Anda juga seharusnya mendapatkan tanda tangan atasan Anda (jika Anda bekerja sebagai pemrogram) atau izin sekolah Anda, jika ada, tentang "penyangkalan hak cipta" untuk program tersebut, jika perlu. Berikut adalah contoh; ubah namanya:

```
Yoyodyne, Inc., dengan ini menyanggah kepentingan semua hak cipta di dalam
program 'Gnomovision' (yang melakukan pass-pass pada kompilator) yang
diprogram oleh James Hacker.


tanda tangan Ty Coon, 1 April 1989
Ty Coon, Wakil Presiden Direktur
```

General Public License ini tidak mengizinkan memasukkan program Anda ke dalam program tak bebas. Jika program Anda adalah library subrutin, Anda boleh saja berpikir bahwa akan lebih berguna jika program tak bebas diperbolehkan untuk di-link ke library tersebut. Jika ini adalah apa yang Anda kehendaki, maka gunakanlah GNU Library General Public License daripada Lisensi ini.