



Space Activities Amendment (Bilateral Agreement) Act 2001

No. 101, 2001



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An Act to amend the *Space Activities Act 1998*, and for related purposes

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Space Activities Amendment (Bilateral Agreement) Act 2001

No. 101, 2001

An Act to amend the *Space Activities Act 1998*, and for related purposes

[Assented to 4 September 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Space Activities Amendment (Bilateral Agreement) Act 2001*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Space Activities Act 1998

1 At the end of paragraph 3(c)

Add:

; and (d) to implement certain of Australia's obligations under specified space cooperation agreements.

2 Section 4 (simplified outline)

After:

- A Register of Space Objects is established under Part 5.

insert:

- Part 5A provides a framework for implementation of specified space cooperation agreements.

3 Section 8

Insert:

intergovernmental agreement with Russia means the Agreement between the Government of Australia and the Government of the Russian Federation on Cooperation in the Field of the Exploration and Use Of Outer Space for Peaceful Purposes done at Canberra on 23 May 2001 the English text of which is set out in Schedule 6, and includes that Agreement as amended from time to time in relation to Australia.

4 After Part 5

Insert:

Part 5A—Implementation of space cooperation agreements

79A Implementation of intergovernmental agreement with Russia

- (1) Regulations may be made for and in relation to giving effect to one or more provisions of the intergovernmental agreement with Russia.
- (2) Regulations under subsection (1) must not come into operation on a day earlier than the day on which the agreement enters into force in Australia.

79B Regulations may amend Schedule

Regulations may be made to amend Schedule 6 for the purposes of ensuring that Schedule 6 correctly sets out the English text of the intergovernmental agreement with Russia as in force from time to time.

5 After paragraph 108(2)(a)

Insert:

- (aa) giving effect to specified space cooperation agreements; and

6 At the end of the Act

Add:

Schedule 6—Agreement between the Government of Australia and the Government of the Russian Federation on Cooperation in the Field of the Exploration and Use of Outer Space for Peaceful Purposes

Note: This is the copy of the Agreement referred to in the definition of *intergovernmental agreement with Russia* in section 8 of this Act.

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF
THE RUSSIAN FEDERATION, hereafter referred to as the Parties,

EXPRESSING a common desire for the development of long term cooperation
in the exploration of outer space and the application of space equipment and
technologies for the benefit of the peoples of both countries,

CONSIDERING that the expansion of such cooperation gives rise to new
practical requirements for the organisational and legal regulation of relations
between its participants,

RECOGNISING the significant potential mutual benefits from encouragement
and development of cooperation in commercial space activities,

ACCORDING due significance to the elaboration of coordinated measures
aimed at facilitating future forms of industrial, economic and commercial
activities and business partnerships in the space field, including fair and
mutually beneficial trade practices and procurement methods,

REAFFIRMING their commitment to enhancing the peaceful use of outer space
through regional and global cooperation,

TAKING into consideration the Treaty on Principles Governing the Activities
of States in the Exploration and Use of Outer Space, including the Moon and
other Celestial Bodies, of 27 January 1967, as well as other multilateral treaties
regulating the use of outer space in which both Australia and the Russian
Federation participate.

HAVE AGREED on the following:

Article 1

Purpose

The purpose of this Agreement is to promote creation of an adequate organisational and legal basis for mutually beneficial cooperation in specific areas of joint activity relating to the exploration and use of outer space and the practical application of space equipment and technology for peaceful purposes, particularly by:

- a) creating a framework for commercial and other activities related to the launching of space apparatus;
- b) encouraging scientific research and cooperation, and joint activities in design, development, production, testing and operation of space equipment;
- c) promoting mutual exchanges of relevant technologies, expertise, equipment and material resources; and
- d) providing conditions for the conclusion of subsequent agreements and arrangements relating to activities pursuant to this Agreement.

Article 2

Applicable Law

Cooperation pursuant to this Agreement shall be carried out in accordance with the domestic law and regulations of the States of the Parties, in observance of generally recognised norms and principles of international law and without prejudice to the fulfilment by the Parties of obligations under other agreements in which they participate.

Article 3

Cooperating Agencies and Organisations

1. The Competent Agencies responsible for the development and coordination of cooperation pursuant to this Agreement shall be: the Department of Industry, Science and Resources on behalf of the Government of Australia, and the Russian Aviation and Space Agency on behalf of the Government of the Russian Federation. Where necessary, either of the Parties may, upon agreement of the other Party by means of written notification through diplomatic channels, appoint another department or agency as the Competent Agency.
2. In accordance with the domestic law and regulations of their States, the Parties may, upon mutual agreement, authorise other departments and agencies to carry out specialised activities within the framework of this Agreement. Competent Agencies may, within their authority and upon mutual agreement, appoint or involve relevant organisations in such specialised activities.

Article 4

Areas of Cooperation

Cooperation pursuant to this Agreement may be carried out in such areas as:

- a) the scientific exploration of outer space, including the physics of solar and terrestrial links, radioastronomy, high energy astrophysics and the study of the planets;
- b) remote sensing and monitoring of the Earth from space;

- c) materials processing in space;
- d) space medicine and biology;
- e) space communications and information technologies;
- f) satellite navigation systems and technologies;
- g) research, development and design, manufacturing and operational works related to automated apparatus and manned systems, as well as to the corresponding ground equipment;
- h) industrial and commercial applications of spin-off results of the use of space equipment and technology;
- i) research on matters relating to the protection of the outer space environment; and
- j) as a long term aim, the creation on the territory of Australia of an international cosmodrome for the launch of payloads into outer space using Russian launch vehicles.

Additional areas of cooperation and joint activity shall be determined by mutual agreement between the Parties or their Competent Agencies, as the need arises.

Article 5

Forms of Cooperation

1. Organisational, financial, legal and technical conditions for the accomplishment of specific programs and projects of cooperation shall be the subject of separate agreements between the Competent Agencies, and departments, agencies and organisations referred to in Article 3.2 of this Agreement or, when necessary, and taking into consideration the international obligations of both Parties, of direct agreements between the

Parties, particularly with respect to the regulation of joint activity relating to the conduct of commercial operations and outer space launches.

2. The Parties, their Competent Agencies, and departments, agencies and organisations referred to in Article 3.2 of this Agreement shall, in pertinent cases, on the basis of separate agreements, facilitate the establishment and development of cooperation in the areas provided for in this Agreement with the participation of other specialised state or private organisations, including those of third countries as well as international organisations.

3. Cooperation pursuant to this Agreement may be carried out in such forms as:
 - a) planning and implementation of joint projects using scientific, experimental and industrial bases;
 - b) mutual provision of scientific and technological information, expertise, experimental data, results of experimental design works, materials and equipment in various fields of space science, equipment and technology;
 - c) development and manufacturing of space apparatus and instruments;
 - d) use of ground objects and systems for securing launches and control of space apparatus, including the collection and exchange of telemetric information;
 - e) organisation of programs for the training of personnel and the exchange of scientists, technical and other specialists;
 - f) conducting joint symposia and conferences;

- g) development of various forms of partnership and joint activity in the international market for space technology and services, including activity associated with commercial space launches;
- h) provision of technical assistance in the field of joint space research; and
- i) mutual facilitation of access to government programs for the practical application of technological innovations and for the promotion of industrial and economic development, as well as to corresponding international programs aimed at the development of an outer space infrastructure.

Additional forms of cooperation and joint activity shall be determined by mutual agreement between the Parties or their Competent Agencies, as the need arises.

4. The Parties or Competent Agencies may, if necessary, establish working groups by mutual arrangement for the purposes of implementing programs and specific activities, as well as elaboration of organisational methods and legal means of development of cooperation pursuant to this Agreement.

Article 6

Financing

1. The financing of joint activity conducted pursuant to this Agreement within government policy in the field of exploration and use of outer space shall be done by the Parties in accordance with the norms and rules

in force in their States as regards budget regulation and, if not otherwise provided for in separate contracts, subject to the availability of funds allocated for that purpose.

2. The Competent Agencies, and departments, agencies and organisations referred to in Article 3.2 of this Agreement shall be responsible for funding those works and types of activities within the framework of this Agreement that were assigned to each of them by mutual agreement between the Parties or direct arrangements between these departments, agencies and organisations.
3. The financing of joint activity falling outside budgetary allocations and/or governmental programs shall be the responsibility of the relevant participants to such activity and may be set out in the separate agreements referred to in Article 5.1 of this Agreement.

Article 7

Intellectual Property

1. The Parties shall ensure protection of intellectual property, created or provided within the framework of this Agreement, in accordance with their respective international obligations, and the domestic law and regulations of their States.
2. The Parties, their Competent Agencies, and departments, agencies and organisations referred to in Article 3.2 of this Agreement shall define, in separate agreements referred to in Article 5.1 of this Agreement, the

conditions and principles to be observed with regard to intellectual property used in and/or resulting from joint activity pursuant to this Agreement, guided by the norms and principles set out in the Attachment to this Agreement, which is an integral part thereof.

3. In the absence of separate agreements as defined in paragraph 2 of this Article, the Competent Agencies, and departments, agencies and organisations referred to in Article 3.2 of this Agreement shall apply the norms and principles set out in the Attachment to this Agreement.

Article 8

Exchange of Information

1. Scientific and technical data and information obtained in the course of conducting joint activities shall be accessible to both Parties, their Competent Agencies, and departments, agencies and organisations referred to in Article 3.2 of this Agreement and be transmitted as soon as practicable.
2. The Parties through their Competent Agencies shall facilitate the mutual exchange of information relating to joint activities pursuant to this Agreement and to the basic directions of their national space programs, subject to the principles contained in the Attachment to this Agreement in the case of exchange of confidential information.
3. No information requiring protection in the national security interests of the States of the Parties and classified in accordance with the domestic

law and regulations of the States of the Parties, shall be transmitted under this Agreement.

Article 9
Protection of Property

Each Party shall ensure the observance of the interests of the other Party, its Competent Agency, and departments, agencies and organisations referred to in Article 3.2 of this Agreement pertaining to the legal protection of their property located on the territory of its State pursuant to activity conducted within the framework of this Agreement including, in relevant cases, and when agreed to by the Parties, immunity of mutually specified categories of goods from any seizure or executive action.

Article 10
Liability

1. In the interests of encouraging the development of joint activities pursuant to this Agreement, without prejudice to separate agreements which may be entered into by the Parties to take into account the particular needs and specific circumstances of pursuing certain programs and projects of cooperation, and without prejudice to the international obligations of the Parties, including under the Convention on International Liability for Damage Caused by Space Objects of 29 March 1972 (Liability Convention), the obligations of the Parties to each other

in relation to liability and indemnity shall be in accordance with this Article.

2. The Parties may agree on additional or alternative principles regarding liability in separate agreements as between themselves, which may include, but not be limited to, apportionment of liability and indemnity for damage, to be applied generally or in relation to specific types of joint activity. Such agreements may include, amongst others, descriptions of relevant equipment, procedures of investigation and submission of claims.

3. For the purposes of this Article:
 - a) “protected activity” shall mean any activity within the framework of this Agreement which, by mutual written agreement between the Parties and with the consent of their Competent Agencies, and departments, agencies and organisations referred to in Article 3.2 of this Agreement is performed in accordance with the principle of cross-waiver of liability;
 - b) “damage” means:
 - (1) bodily injury to, or any other impairment of the health of, or death of, any person;
 - (2) damage to, loss of, or loss of use of any property;
 - (3) loss of revenue or profits; or
 - (4) other direct or indirect damage;
 - c) “Party” means either of the Parties and includes, in this Article, their Competent Agencies, and departments, agencies and organisations referred to in Article 3.2 of this Agreement;
 - d) “related entity” means:

- (1) a contractor or subcontractor of a Party at any tier;
- (2) a user or customer of a Party at any tier; or
- (3) a contractor or subcontractor of a user or customer of a Party at any tier.

The term “related entity” may, subject to appropriate arrangements, also include organisations or institutions of a third State, when such organisations or institutions have the same relations with the Parties as described in “d(1)”, “d(2)”, or “d(3)” above, or are otherwise involved in the protected activity. The terms “contractors” and “subcontractors” may include suppliers of any kind.

4. In respect to a protected activity, each Party agrees to a cross-waiver of liability and, accordingly, each Party waives any claims for damages against the other Party, related entities of the other Party and employees of the other Party or employees of related entities of the other Party, whatever the legal basis for such claims, including, amongst others, claims under the Liability Convention or other claims under international law or claims in contract.
5. This cross-waiver of liability shall apply only if the Party, related entities, employees or property causing the damage and the Party, related entities, employees or property suffering the damage, are participating or being used, respectively, in a protected activity.
6. Each Party shall extend the application of the principle of cross-waiver of liability to its related entities through contract or other means.

7. Notwithstanding paragraphs 4, 5 and 6 of this Article, this cross-waiver of liability shall not be applicable to:
 - a) claims between a Party and its own related entities or claims between its own related entities;
 - b) claims made by a natural person not falling within the definition of a related entity, his/her estate, survivors, or subrogees in connection with indemnifying damage for bodily injury or any other damage to such natural person or his/her death;
 - c) claims for damage caused by wilful misconduct;
 - d) intellectual property claims.

8. Nothing in this Article shall be construed to create the basis for claims or suits where none would otherwise exist.

9. The Parties shall consult promptly on any potential liability under international law, including the Liability Convention, on the apportionment of liability, and in the event of claims arising, on the defence of claims, and shall cooperate fully with a view to establishing the facts in the investigation of any accident, in particular through the exchange of experts and information.

Article 11
Customs Regulation

1. For the purposes of this Article “goods” shall mean spacecraft, space transportation systems, their elements, instruments, control, testing and other types of equipment required, in particular for a launch, as well as

technologies in the form of information and data recorded on material media. The technology and information identified above include:

- a) computer software and databases;
 - b) inventions;
 - c) design and engineering developments;
 - d) trade secrets and know-how, including manufacturing documentation and technical specifications; and
 - e) data on research, experimental, design and engineering development activities.
2. The movement of goods specified in paragraph 1 of this Article and especially intended for the purposes of cooperation within the framework and upon the terms of this Agreement, across the customs borders of the States of the Parties, shall be free of customs duties.
3. Where the domestic law and regulations of the States of the Parties do not provide for direct exemption from other taxes on goods for the purposes of cooperation under this Agreement, and such taxes are collected by customs authorities, such an exemption shall be applied on the basis of this Agreement subject to the domestic law and regulations of the States of the Parties.

Article 12

Export Control

1. Technology transfer for the purposes of any joint activity pursuant to this Agreement shall be undertaken by the Parties subject to the observation

of the domestic law and regulations of their States, including the requirements of the Missile Technology Control Regime (MTCR). The Parties shall act in accordance with the domestic law and regulations of their States, on export control in relation to those goods and services included in the national lists and enumerations of export controls.

2. This Article extends to any form of cooperation, the exchange of information, technical data and items of all types, including joint industrial production and intellectual property, where they are regulated by the MTCR, on the territory of the exporter, importer or third countries.

Article 13

Assistance to the Activities of Personnel

Each Party, in accordance with the domestic law and regulations of its State, shall assist the entry to the territory of its State of personnel assigned on a mission by the other Party, its Competent Agency, and departments, agencies and organisations referred to in Article 3.2 of this Agreement as regards the procedure of appropriate visa processing.

Article 14

Economic and Industrial Types of Activity

In accordance with the domestic law and regulations of their States, the Parties will strive to encourage activity by organisations, enterprises and firms of their countries, directed at the support of joint programs of cooperation in the field of

exploration and use of outer space, and the practical application of space equipment and technology. For these purposes, the Parties will strive to implement, by mutual arrangement, measures to facilitate corresponding entrepreneurial activities, trade and economic transactions.

Article 15
Settlement of Disputes

1. The Parties, if necessary, shall hold consultations on matters pertaining to the interpretation and implementation of this Agreement. The Parties shall seek to resolve any dispute between them concerning the interpretation and implementation of this Agreement through prompt and amicable negotiations and consultations, including through diplomatic channels.

2. Disputes between Competent Agencies or between departments, agencies and organisations referred to in Article 3.2 of this Agreement shall be referred, for joint consideration, to the senior executives of respectively, Competent Agencies, and these departments, agencies and organisations or their plenipotentiaries, who should make all efforts to resolve the dispute by consensus. Within the framework of the procedure provided for in this paragraph, disputes may be referred to settlement through conciliation with the purpose of achieving agreement or drafting findings or recommendations on all matters of facts and law pertaining to the issue.

3. If a dispute has not been settled by means of procedures envisaged in paragraph 1 of this Article within six months after one of the Parties forwards a written request to hold such negotiations or consultations, it shall, upon request of either Party, be submitted to an Arbitral Tribunal which shall be established in accordance with the provisions of this Article.

4. An Arbitral Tribunal shall be constituted for each individual case in the following way:
 - a) within two months of the receipt of the request for consideration of the dispute by arbitration, each Party shall appoint an arbitrator. Those two arbitrators shall then select a national of a third country who, on approval by the two Parties, shall be appointed Chairman of the Arbitral Tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two arbitrators;
 - b) in case an arbitrator appointed as provided for in this Article shall resign or become unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

5. If, within the period specified in paragraph 4 of this Article, the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make all necessary appointments. If the President is a national of the State of either Party or is unable to discharge the said function, the

next most senior Member of the Court who is not disqualified on such a ground shall make the necessary appointments.

6. The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to the agreement between the Parties, determine its own procedure. The Arbitral Tribunal shall reach its award by majority vote taking into account the provisions of this Agreement, the international treaties both Parties have concluded and the generally recognised norms and principles of international law. It may render an award on the default of a Party. Any award shall be rendered in writing and shall state its legal basis. An award shall be final and binding on the Parties, if the Parties have not agreed in advance on the procedure of appeal.
7. Each Party shall bear the costs of its arbitrator. The costs of the Chairman of the Arbitral Tribunal and other expenses associated with the conduct of the arbitration shall be borne in equal parts by both Parties. The Arbitral Tribunal may decide, however, that a higher proportion of costs shall be borne by one of the Parties.

Article 16

Final Provisions

1. This Agreement shall enter into force from the date of the latter written notification through diplomatic channels on completion by the Parties of domestic procedures necessary for its entry into force.

2. This Agreement is concluded for a period of ten years. Its effect shall be automatically extended for a subsequent ten-year period if neither of the Parties notifies the other Party through diplomatic channels of its intention to terminate it twelve months before the expiry of the initial ten-year period. This Agreement may be terminated by either Party in the period following its automatic extension by twelve months written notice to the other Party through diplomatic channels.
3. Additional extension of this Agreement shall be the subject of consultations between the Parties, which shall commence no later than twelve months before the expiry of the period of its automatic extension.
4. This Agreement may be amended and supplemented by the agreement of the Parties in written form.
5. In the event of the termination of this Agreement, its provisions shall continue to apply to all unfinished activities if the Parties do not agree otherwise. The termination of this Agreement shall not serve as the basis for the revision or termination of obligations of a financial or other contractual nature still in force and shall not affect the rights and obligations of legal and natural persons, which have arisen before its termination.
6. From the date of the entry into force of this Agreement, the Agreement between the Government of Australia and the Government of the Union of Soviet Socialist Republics on Co-operation in Space Research and the Use of Space for Peaceful Purposes of 1 December 1987 shall cease to have effect as between Australia and the Russian Federation.

Done at Canberra on 23 May 2001 in duplicate, each in the English and Russian languages, both texts having equal validity.

**FOR THE GOVERNMENT
OF AUSTRALIA**

**FOR THE GOVERNMENT
OF THE RUSSIAN FEDERATION**

[Signatures Omitted]

ATTACHMENT

INTELLECTUAL PROPERTY

The Parties shall use their best endeavours to ensure the effective protection of results obtained within the framework of cooperation, which is a subject of this Agreement and separate agreements referred to in Article 5 of this Agreement.

The Competent Agencies, and departments, agencies and organisations referred to in Article 3.2 of this Agreement, hereinafter described as “cooperating organisations”, shall in good time inform each other about all results of joint activity subject to protection as intellectual property and promptly cooperate to obtain registration or carry out other procedures for protection.

1. Sphere of Application

1. This Attachment applies to all types of joint activity performed pursuant to the cooperation under this Agreement, with the exception of those cases when the Parties or cooperating organisations agree on any special provisions within the framework of separate agreements referred to in Article 5 of this Agreement.

2. For the purposes of this Agreement, the term “intellectual property” has the meaning provided for in Article 2 of the Convention establishing the World Intellectual Property Organization done at Stockholm on 14 July 1967.

3. This Attachment shall regulate the allocation of intellectual property rights between the Parties or cooperating organisations in relation to a joint activity. Each Party shall act in such a way that the cooperating organisations of the other Party can acquire the rights to intellectual property belonging to them in accordance with this Attachment.
4. This Attachment does not change the Parties' legal regulation of intellectual property rights determined by the legislation of their States and the internal regulations of cooperating organisations taking into account provisions envisaged in section 2, paragraph 6 of this Attachment. In the same way, this Attachment does not alter the relations between the cooperating organisations of each Party and relations between the Parties and these organisations. Furthermore it will not prejudice the international obligations of the Parties.
5. Carrying out of joint works does not affect the intellectual property rights of the cooperating organisations acquired earlier or resulting from independent research (background intellectual property).
6. The termination of this Agreement does not affect rights or obligations having arisen on the basis of this Attachment, if they were accepted before such termination.

2. Grant of Rights

1. In relation to intellectual property created in the course of a joint activity, the Parties or cooperating organisations shall strive to jointly elaborate a plan for the assessment and use of technology either before the beginning

of their cooperation or within a reasonable time from the moment when a cooperating organisation creates an object of intellectual property. In this plan for the assessment and use of technology, they shall take into account the corresponding contributions of the Parties and their cooperating organisations to the activity under consideration, including background intellectual property transferred in the framework of cooperation, define types and scope of use of the intellectual property, terms and procedures of the realisation of rights on it on the territory of the States of the Parties, as well as on the territory of other countries, recognising that the minimal scope is the right of each cooperating organisation to use created intellectual property for its own needs. For the purposes of granting intellectual property rights, an activity is considered to be a joint activity from the moment when it is defined as such in separate agreements referred to in Article 5 of this Agreement. The grant of rights to the objects of intellectual property created as a result of an activity, which is not a joint activity, shall be carried out according to the provisions of paragraph 3 of this section. The Parties or cooperating organisations shall decide by mutual arrangement whether the results of work jointly carried out should be either patented or registered or kept secret.

2. If such a plan for the assessment and use of technology is not established within four months from the moment of the creation of the object of intellectual property which is a result of a joint activity, each of the Parties or cooperating organisations may receive all rights and benefits from such intellectual property on its State's territory. Cooperating organisations shall in relation to a joint activity negotiate regarding the allocation of intellectual property rights, as well as the expenses related to

the protection of intellectual property rights under mutually agreed conditions, taking into account the corresponding contributions of each of them.

3. In cases, which are not joint activities, the terms for the implementation of a procedure for the acquisition and use of intellectual property rights shall be determined in separate agreements and contracts.
4. The Parties shall on the initiative of either of them, without delay, consult for the purposes of securing protection and distribution of intellectual property rights on protected objects of intellectual property in third countries applying the provisions of paragraphs 1 and 2 of this section.
5. The rules for the internal regulation of host organisations or institutions as regards intellectual property rights as well as possible remuneration and disbursements related to these rights as they are determined by the internal regulations of each of the host organisations extend to researchers and scientists of one of the Parties enlisted in the service of any organisation or institution of the other Party. Each researcher or scientist, designated as an inventor is entitled in accordance with his contribution to a share of remuneration to be earned by the host organisation or institution for licensing this intellectual property.
6. Copyright extends to publications. Each Party and its cooperating organisations shall be entitled to non-exclusive, irrevocable and free licences for non-commercial purposes for the translation, reproduction and public distribution in all countries of scientific and technical articles, lectures (reports), books and other copyright products, which are the

direct result of a joint activity. The forms of implementation of these rights shall be determined in separate agreements and contracts. All copies of publications should show the author's name unless he expressly refuses to give his name or wishes to appear under a pseudonym.

7. The totality of intellectual property rights, but not including moral rights, to computer programs elaborated within the framework of cooperation shall be allocated between the cooperating organisations taking into account their contribution to its elaboration and financing. In cases of joint elaboration or joint financing of computer programs by both Parties or cooperating organisations a regime to be applied in relation to these programs, including the allocation of remuneration in the case of commercial use, shall be determined by separate agreements or contracts. In the absence of separate agreements or contracts the provisions of paragraphs 1 and 2 of this section related to the allocation of rights in connection with a joint activity shall apply.

8. Confidential information shall be designated as such in an appropriate manner. The responsibility for such a designation shall rest with the Party or cooperating organisation, which demands such confidentiality. Each Party or cooperating organisation shall protect such information in accordance with applicable laws and regulations of its State. The term "confidential information" means any know-how, data or information, in particular technical, commercial or financial, independent of the form in which it is passed on for the purposes of carrying out activity pursuant to this Agreement and which corresponds to the following conditions:

- a) the possession of this information may ensure gains, in particular ones of an economic, scientific or technical character or give an advantage in competition with persons who do not possess it;
- b) this information is not generally known or widely available from other sources;
- c) this information was not earlier passed on by its possessor to a third person without the obligation to maintain its confidentiality;
- d) this information is not already at the disposal of the recipient without the obligation to maintain its confidentiality.

The Parties or cooperating organisations may transfer confidential information to their own employees, unless otherwise provided in separate agreements referred to in Article 5 of this Agreement. Such information may be passed on to the basic performers of the work and subcontractors within the framework of the sphere of application of separate contracts with them. Information given in this way may be used only within the limits of the sphere of application of those contracts, which would envisage the conditions and time limits of application of such provisions on confidentiality.

The Parties and cooperating organisations undertake to adopt all necessary measures in relation to their employees, basic performers of work and subcontractors for the observance of the obligations on protecting confidentiality determined above.

9. The grant of the results of joint research and elaboration to third persons shall be the subject of written agreements between the Parties or cooperating organisations. Without prejudice to the implementation of

rights in accordance with paragraph 6 of this section, such agreements will determine the procedure for the distribution of the referred results.

*[Minister's second reading speech made in—
House of Representatives on 6 June 2001
Senate on 7 August 2001]*

(95/01)
