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Consolidated Text

**Anti-Counterfeiting Trade Agreement**

Informal Predecisional/Deliberative Draft:  
25 August 2010

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The Parties to this Agreement<sup>1</sup>

[NZ/Can/Mex/AUS/Sing/Mor. *Noting* that 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 the social and economic welfare, and to the balance of rights and obligations;]

*Noting* that the proliferation of counterfeit trademark and pirated copyright goods {EU/CH/J: infringement of intellectual property rights} undermines legitimate trade and the sustainable development of the world economy, causes significant financial losses for right holders and for legitimate businesses, and in some cases, [J/EU/US: provides a source of revenue for organized crime and otherwise] poses risks to the public;

*Desiring* to combat such proliferation through enhanced international cooperation and through more effective international enforcement;

*Intending* to provide effective and appropriate means, [complementing] the TRIPS Agreement, for the enforcement of trademark and copyright or related rights {EU/CH/J: intellectual property rights}, taking into account differences in their respective legal systems and practices;

*Desiring* to ensure that measures and procedures to enforce trademark and copyright or related rights {EU/CH/J: intellectual property rights} do not themselves become barriers to legitimate trade;<sup>2</sup>

*Recognizing* that enforcement of trademark and copyright or related rights {EU/CH/J: intellectual property rights} needs to balance the legitimate interests of right holders and of users [US: of such rights];

*Desiring* to address the problem of copyright or related rights infringement {EU/CH/J: intellectual property infringement} which takes place by means of digital networks in a manner that balances the rights [J/EU/NZ/Can: interests] of the relevant right holders, online service providers and users of those networks<sup>3</sup>; and

*Desiring* that ACTA operate in a manner mutually supportive of international enforcement work and cooperation conducted within relevant international organizations;

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<sup>1</sup> Negotiator's Note: insert footnote in Article 6.1 of list of negotiating parties.

<sup>2</sup> Negotiator's Note: combine this language with other balancing language.

<sup>3</sup> Negotiator's Note: Negotiators will revisit this paragraph after wording in Article 2.18 is finalized.

[CH/US/EU/Kor/Mor/Mex/J: *Determined* to implement this Agreement in a manner consistent with the objectives and principles set out in the TRIPS Agreement;]

*Recognizing* the principles set out in the Doha Declaration on the TRIPS Agreement and Public Health, adopted on November 14, 2001, by the WTO at the Fourth WTO Ministerial Conference, held in Doha, Qatar;<sup>4</sup>

Agree as follows:

**CHAPTER ONE**  
**INITIAL PROVISIONS AND DEFINITIONS**

**Section A: Initial Provisions**

ARTICLE 1.1: RELATION TO OTHER AGREEMENTS

Nothing in this Agreement shall derogate from any obligation [NZ/US/Kor/J/CH/Mex/Can/Sing: of a Party with respect to any other Party] under existing agreements, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

ARTICLE 1.2: NATURE AND SCOPE OF OBLIGATIONS

1. Each Party shall give effect to the provisions of this Agreement. A Party may implement in its domestic law more extensive enforcement of intellectual property rights than is required by this Agreement, provided that such enforcement does not contravene the provisions of this Agreement. Each Party shall be free to determine the appropriate method of implementing the provisions of this Agreement within its own legal system and practice.

2. Nothing in this Agreement creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and enforcement of law in general.

ARTICLE 1.3: RELATION TO STANDARDS CONCERNING THE AVAILABILITY AND SCOPE OF INTELLECTUAL PROPERTY RIGHTS

1. This Agreement shall be without prejudice to provisions governing the availability, acquisition, scope, and maintenance of intellectual property rights contained in a Party's law.

2. This Agreement does not create any obligation on a Party to apply measures where a right in intellectual property is not protected under the laws and regulations of

<sup>4</sup> Negotiator's Note: Verify text with one delegation.

that Party.

ARTICLE 1.4: PRIVACY AND DISCLOSURE OF INFORMATION

1. Nothing in this Agreement shall require any Party to disclose:

- (a) information the disclosure of which would be contrary to its law or its international agreements, including laws protecting right of privacy,
- (b) confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or
- (c) confidential information, the disclosure of which would prejudice the legitimate commercial interests of particular enterprises, public or private.

2. [Aus/Mex/Can/NZ/EU: When a Party provides written information pursuant to a request or a requirement under this Agreement, the Party receiving the information shall, subject to its domestic law, refrain from disclosing or using the information for a purpose other than that for which the information was requested or required, except with the prior consent of the Party providing the information.]

[AUS/NZ/Sing/CAN: ARTICLE 1.X:

1. The 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.

2. Parties 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.

3. 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.] [J/Mex/Kor/US: delete this provision]

[EU/CH: Delete Article 1.X per language in preamble.]

**Section B: General Definitions**

ARTICLE 1.X: DEFINITIONS

For the purposes of this Agreement, unless otherwise specified:

**ACTA** means the Anti-Counterfeiting Trade Agreement;

**days** means calendar days;

**Committee** means the ACTA Committee established under Chapter Five;

**competent authorities** includes judicial, administrative, or law enforcement authorities as may be appropriate in the context and in the laws of each Party;

**counterfeit trademark goods** means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country in which the procedures set out in [Section X are invoked;]

**customs transit** means the Customs procedure under which goods are transported under Customs control from one Customs office to another;

**import**, with its grammatical variations and cognate expressions, means to bring or cause to be brought into a territory by land, water or air from any place which is outside the territory but does not include the bringing into the territory of goods which are to be taken out of the territory on the same conveyance on which they were brought into the territory without any landing or transshipment within the territory.

{**intellectual property** [US: means] [refers to] all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the Agreement on Trade-Related Aspects of Intellectual Property Rights.<sup>5</sup>}

**in-transit goods** means goods under "Customs transit" and under "transshipment";

[**measure** includes any law, regulation, procedure, requirement, or practice;]

**person** means either a natural person or a legal person;

**pirated copyright goods** means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that 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 in which the procedures set out in [Sections X are invoked;]<sup>6</sup>

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<sup>5</sup> MX: Reminding drafters of need for the consistency of terminology, in particular, usage of the term "intellectual property rights," "copyright," and "trademark."

<sup>6</sup> Drafter's note: Footnotes in other chapters to be deleted if definitions are added to this Section.

**right holder** includes a federation or an association having the legal standing to assert rights in intellectual property;

**territory** means customs territory of a Party and all [US: export processing zone/free trade zones] of that Party;

**transshipment** means the Customs procedure under which goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation;

**TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the WTO Agreement;<sup>7</sup>

**WTO** means the World Trade Organization; and

**WTO Agreement** means the *Marrakesh Agreement Establishing the World Trade Organization*, done on April 15, 1994;

## CHAPTER TWO LEGAL FRAMEWORK FOR ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

### General Obligations

#### ARTICLE 2.X: GENERAL OBLIGATIONS WITH RESPECT TO ENFORCEMENT

1. Parties shall ensure that enforcement procedures 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 adopted, maintained, or applied to implement this Chapter shall be fair and [US: ], equitable, [US: ], and provide appropriate protections for all participants subject to the procedures. These procedures] [They] shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays. [EU: Each Party shall ensure that the rights of the [EU/CH: defendants and] third parties shall be duly protected and guaranteed.]

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<sup>7</sup> Negotiator's Note: Where this agreement refers to the TRIPS Agreement, such references are intended to include any waiver adopted pursuant to Article IX of the WTO Agreement that pertains to the TRIPS Agreement.

Option 1: [Mex/US/J/NZ/Sing/CAN/Aus: 3. At least in respect of civil remedies and criminal penalties for enforcement of intellectual property rights, each Party shall take into account, as appropriate, the need for proportionality between the seriousness of the infringement, the interests of third parties and the applicable remedies or penalties.]

Option 2: [EU/CH/Mor: 3. In respect of measures, procedures and remedies adopted, maintained or applied to implement this Chapter, each Party shall ensure the need for proportionality in relation to the infringement.]

4. [US/Aus: Notwithstanding the other provisions of this [J: Chapter] [Agreement], the Parties may limit the remedies available against a government's unauthorized use of intellectual property covered under this Agreement, or against such unauthorized use by a third party that was authorized by a government, to payment of remuneration. The right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization.]

[NZ: Notwithstanding the other provisions of this Chapter in relation to civil remedies and criminal penalties, the Parties may:

- (a) limit civil remedies available against a government's unauthorized use of intellectual property covered under this Agreement, or against such unauthorized use by a third party that was authorized by a government, to payment of remuneration. The right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization; and
- (b) limit or exclude criminal penalties for such unauthorized use of intellectual property rights.]

[Can/US: In other cases, the remedies under this Chapter shall apply or, where these remedies are inconsistent with a Party's law, declaratory judgments and adequate compensation shall be available.]

[EU suggests deleting this article.]

5. {MX/Aus/Sing/NZ/US/Can: define scope of the intellectual property rights covered in the Agreement} {EU/CH: the scope of intellectual property rights will be defined at the start of each chapter.}

{Aus/US/NZ/Can/Sing: This Agreement shall apply [NZ/Can/Sing: only] [Kor: at least] to trademark counterfeiting and copyright piracy unless otherwise specified. The Section on the Digital Environment shall apply only to copyright and related rights.}

6. [US/Mex/CH/Can/Aus: No provision of this Chapter shall be construed to require a Party to provide for liability of officials for acts undertaken in the performance of their official duties.]

## Section 1: Civil Enforcement

### ARTICLE 2.1: AVAILABILITY OF CIVIL PROCEDURES

1. [Can/US/NZ/Sing/AUS: In the context of this section, e] [E]ach Party shall make available to right holders civil judicial procedures concerning the enforcement of any {J/CH/EU: intellectual property right} {Sing/Can/NZ/Aus/US/Mex: copyrights and related rights and trademarks}
2. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that such procedures conform to principles equivalent in substance to those set out in this section.

### ARTICLE 2.X: INJUNCTIONS

[EU/Sing: 1. ]In civil judicial proceedings concerning the enforcement of {Can/NZ/Aus/US/Sing/Mex; copyright or related rights and trademarks} {J/EU: intellectual property rights}, each Party shall provide that its judicial authorities shall have the authority [Can/AUS/Sing: subject to any statutory limitations under its domestic law] to issue an order to a party to desist from an infringement, including an order to prevent infringing goods from entering into the channels of commerce.

[EU/CH: 2. The Parties shall also ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right<sup>8</sup>]

### ARTICLE 2.2: DAMAGES

1. Each Party shall provide that in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer who knowingly or with reasonable grounds to know, engaged in infringing activity of {intellectual property rights} {copyright or related rights, or trademarks}, to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement.

In determining the amount of damages (US/Can: for copyrights and related rights infringements and trademarks counterfeiting), its judicial authorities shall have the authority to consider, *inter alia*, any legitimate measure of value submitted by the right holder, which may include the lost profits, the value of the infringed good or service, measured by the market price, the suggested retail price.

2. {At least} in cases {EU/CH: of intellectual property rights} {of copyright or related rights infringement and trademark counterfeiting}, each Party shall provide that in civil

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<sup>8</sup>[EU/CH: The conditions and procedures relating to such injunction will be left to each Party's legal system.]



judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder the profits of the infringer that are attributable to the infringement. A Party's legal system may presume the profits of the infringer to be the amount of damages referred to in paragraph 1.

3. {US: At least with respect to works, phonograms, and performances protected by copyrights or related rights, and in cases of trademark counterfeiting, e} [E]ach Party shall also establish or maintain a system that provides for one or more of the following:
- a) pre-established damages, or
  - b) presumptions for determining the amount of damages<sup>9</sup> sufficient to compensate the right holder for the harm caused by the infringement, or
  - c) at least for copyright, additional damages.

Option 1

4. Where a party provides one of the options described in paragraph 3 (a) or 3 (b), that Party shall ensure that a right holder has the right to choose that option as an alternative to the remedies referred to in paragraph 1.

Option 2

[EU/CH: 4. Where a party provides one of the options described in paragraph 3 (a) or 3 (b), that Party shall ensure that such option is available as an alternative measure to those referred to in paragraph 1 and 2.]

5. Each Party shall provide that its judicial authorities, where appropriate, shall have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of {intellectual property rights} {copyright or related rights, or trademarks}, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees or any other expenses as provided for under that Party's domestic law.

ARTICLE 2.3: OTHER REMEDIES

1. With respect to goods that have been found to be {US/Aus/Can/Sing/Kor/NZ/Mex: pirated or counterfeited} {J/EU/CH: infringing an intellectual property right}, each Party shall provide that in civil judicial proceedings, at the right holder's request, its judicial authorities shall have the authority to order that such goods be destroyed, except in exceptional circumstances, without compensation of any sort.

2. Each Party shall further provide that its judicial authorities shall have the

<sup>9</sup> Such measures may include the presumption that the amount of damages is (i) the quantity of the goods infringing the right holder's {intellectual property right in question} and actually assigned to third persons, multiplied by the amount of profit per unit of goods which would have been sold by the right holder if there had not been the act of infringement, or (ii) a reasonable royalty or (iii) a lump sum on the basis of elements such as at the least the amount of royalties or fees which would have been due if the infringer had requested authorization to use the {intellectual property right in question.}

authority to order that materials and implements the predominant use of which has been in the manufacture or creation of {J/EU: infringing} {US/Aus/Can/Sing/NZ/Mex: pirated or counterfeit} goods be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.

3. The judicial authorities [EU/CH/Aus/Can: shall] [US/EU: may] have the authority to order that those remedies be carried out at the expense of the infringer.

#### ARTICLE 2.4: INFORMATION RELATED TO INFRINGEMENT

Without prejudice to its domestic law that governs the protection of confidentiality of information sources, the processing of personal data, or privilege, each Party shall provide that in civil judicial proceedings concerning the enforcement of {J/CH/EU: intellectual property rights} {Can/NZ/Aus/Sing/US/Mex: copyright or related rights and trademarks}, its judicial authorities shall have the authority upon a justified request of the right holder, to order the infringer, or in the alternative, the alleged infringer to provide, at least for the purpose of collecting evidence, relevant information as provided in its applicable laws and regulations that the infringer or alleged infringer possesses or controls, to the right holder or to the judicial authorities. Such information may include information regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of such goods or services, including the identification of third persons involved in the production and distribution of the infringing goods or services or in their channels of distribution.

#### ARTICLE 2.5: PROVISIONAL MEASURES

[EU/CH/J: 1. Each Party shall provide that its judicial authorities shall have the authority, at the request of the applicant, to issue a provisional measure intended to prevent any imminent infringement of an intellectual property right. Such provisional measures may also be issued under certain conditions in relation to an intermediary whose services are being used by a third party to infringe an intellectual property right. Each Party shall also provide that provisional measures may be issued, even before the commencement of the proceedings on the merits, to preserve relevant evidence in respect to the alleged infringement.]

2. Each Party shall provide its judicial authorities with the authority to act expeditiously on requests for provisional measures *inaudita altera parte* and to make a decision without undue delay.

3. {US/J/NZ/MX/Aus: In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting}<sup>10</sup>, each Party shall provide that its judicial authorities shall have the authority to order the seizure or other taking into custody of suspected infringing goods, materials, and implements relevant to the act of

<sup>10</sup> EU raises issue of scope of this provision

infringement and, at least for trademark counterfeiting, documentary evidence, either originals or copies thereof, relevant to the infringement.

4. Each Party shall provide that its authorities have the authority to require the plaintiff, with respect to provisional measures, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff's right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a security or equivalent assurance sufficient to protect the defendant [EU/CH/J/Mor/NZ/Can: , if the measure is revoked or lapses due to any reason,] and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to such procedures.

## **Section 2: Border Measures<sup>11</sup>**

{EU/CH: ARTICLE 2.X: SCOPE OF THE BORDER MEASURES

1. This section sets out the conditions for action by the competent authorities when goods are suspected of infringing intellectual property rights, within the meaning of this agreement, when they are imported, exported, in-transit or in other situations where the goods are under customs supervision.

2. For the purposes of this section, "goods infringing an intellectual property right" means goods infringing any of the intellectual property rights covered by TRIPS.<sup>12</sup> However, Parties may decide to exclude from the scope of this section, certain rights other than trademarks, copyrights and GIs when [not protected exclusively by copyright and trade mark systems and] [protected by [non-product- or sector-specific] [registration] *sui generis* systems.]}

{US/Aus/Sing/NZ/J/Can: Parties shall provide for the provisions related to border measures to be applied [US/Sing/J: at least] in cases of trademark counterfeiting and copyright piracy. [US/Sing/J: Parties may provide for such provisions to be applied in other cases of infringement of intellectual property rights]}

ARTICLE 2.X: [SMALL CONSIGNMENTS AND PERSONAL LUGGAGE]

<sup>11</sup> Where a Party has dismantled substantially all controls over movement of goods across its border with another Party with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

<sup>12</sup> [ Aus/KOR/CH/J: The provisions of this section shall also apply to confusingly similar trademark goods [J: , which means any goods, including packaging, bearing without authorization a trademark that is similar to the trademark validly registered in respect of such or similar goods where there exists a likelihood of confusion on the part of the public between the trademark borne and the trademark validly registered, and that thereby infringes the rights of the owner of the trademark in question under the law of the country in which the procedures set out in this Section are invoked.]]

1. Parties shall include in the application of this section goods of a commercial nature sent in small consignments.
2. Parties may exclude from the application of this Section small quantities of goods of a non-commercial nature contained in travelers' personal luggage.

ARTICLE 2.X: PROVISIONS OF INFORMATION FROM RIGHT HOLDER

Each Party shall permit the competent authorities to request a right holder to supply relevant information to assist the competent authorities in taking border measures provided for under this Section. Each Party may also allow a right holder to supply relevant information to the competent authorities.

ARTICLE 2.6: APPLICATION BY RIGHT HOLDER

Option 1

[EU/KOR/Mor/Mex/US/CH: 1. Each Party shall provide procedures<sup>13</sup> for import, in-transit and export shipments, by which right holders may request the competent authorities to suspend release of or detain suspected counterfeit trademark goods and suspected pirated copyright goods {EU: goods suspected of infringing an intellectual property right} into free circulation.

Option 2

[J: 1. Each Party shall provide procedures for import and export shipments and may provide procedures for in-transit shipments, by which right holders may request the competent authorities to suspend the release of the suspected counterfeit trademark goods and suspected pirated copyright goods.]

Option 3

[NZ/Can/Sing/Aus:1. Each Party shall provide procedures for import shipments and may provide procedures for export and in-transit shipments, by which right holders may request the competent authorities to suspend the release of the suspected counterfeit trademark goods and suspected pirated copyright goods.]

Option 4

{EU: Each Party shall provide procedures by which right holders may request the competent authorities to suspend the release of goods suspected of infringing intellectual property rights or detain them.}

2. The competent authorities shall require a right holder requesting the procedures described in paragraph 1 to provide adequate evidence to satisfy themselves that, under the laws of the Party providing the procedures, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that

<sup>13</sup> [Can/US/NZ: It is to be 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.]

may reasonably be expected to be within the right holder's knowledge to make the suspected infringing goods reasonably recognizable by the competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to the procedures described in paragraph 1.

3. Each Party shall provide for applications to suspend the release of suspected infringing goods that apply to all goods<sup>14</sup> under customs control in its territory and remain applicable to multiple [Sing: or in the alternative specified] shipments. Each Party may provide that, at the request of the right holder, the application to suspend the release of goods may apply to selected points of entry and exit under customs control. These applications for suspension shall remain applicable for a period of not less than [NZ/US/CH/J/EU/Kor/Can/AUS/Mor/Mex: one year] [Sing: or sixty days] from the date of application, or the period of protection of the relevant intellectual property rights under the laws of the Party providing border measures under this Section, whichever is shorter. Each Party may permit a right holder to specify that an application to suspend remain applicable for a period of less than [NZ/US/CH/J/EU/Kor/Can/AUS/Mor/Mex: one year] [Sing: or sixty days].

4. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application. Where the competent authorities have accepted the application, they shall also make known to the applicant the period of validity of the application.

5. Each Party may provide, where the applicant has abused the process, or where there is due cause, that an application may be denied, suspended, or voided.

#### ARTICLE 2.7: EX-OFFICIO ACTION

##### Option 1

[US/EU/CH/J/Mor/Mex/Kor: 1. Each Party shall provide that its customs authorities may act upon their own initiative, to suspend the release of or detain suspected counterfeit trademark goods or suspected pirated copyright goods with respect to imported, exported, or in-transit goods including suspected counterfeit trademark goods or suspected pirated copyright goods admitted to, withdrawn from, or located in free trade zones.

##### Option 2

[NZ: 1. Each Party may provide that its customs authorities may act upon their own initiative, to suspend the release of or detain suspected counterfeit trademark goods or suspected pirated copyright goods with respect to imported, exported or in-transit goods including suspected counterfeit trademark goods or suspected pirated copyright goods admitted to, withdrawn from, or located in free trade zones

##### Option 3

<sup>14</sup> Whether this applies to imports, exports and/or in transit goods depends on paragraph 1.

[Aus/Can/Sing: 1. Each Party shall provide that its customs authorities may act upon their own initiative, to suspend the release of or detain suspected counterfeit trademark goods or suspected pirated copyright goods with respect to imported goods including suspected counterfeit trademark goods or suspected pirated copyright goods admitted to, withdrawn from, or located in free trade zones. Each Party may provide its customs authorities the same authority as the foregoing provision of this Article in respect of exported and in-transit goods that are suspected counterfeit trademark goods or suspected pirated copyright goods.]

#### Option 4

{EU/Mor: Each Party shall provide that its competent authorities may act upon their own initiative, to suspend the release of goods suspected of infringing an intellectual property right.}

#### ARTICLE 2.X

[Aus/NZ/Can: As an alternative to procedures in Article 2.6.1 and 2.7.1 relating to export or in-transit shipments, each Party shall provide that where shipments are exported from that Party, or shipments are in-transit through that Party, it shall have the authority, to provide sufficient information to the destination Party, about such shipments, to promote effective enforcement against shipments of infringing<sup>15</sup> goods.]

#### ARTICLE 2.9: SECURITY OR EQUIVALENT ASSURANCE

Each Party shall provide that its competent authorities shall have the authority to require a right holder requesting procedures described under Article 2.6 to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party may provide that such security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of the goods in the event the competent authorities determine that the good {US/J/Can/Aus/Kor/Mor/Sing: is not a counterfeit trademark good or a pirated copyright good} {EU/CH: does not infringe intellectual property rights covered by this section}. Only in exceptional circumstances or pursuant to a judicial order may a Party permit a defendant to post a bond or other security to obtain possession of suspected counterfeit trademark goods or suspected pirated copyright goods.

#### ARTICLE 2.10: DETERMINATION AS TO INFRINGEMENT

Each Party shall adopt or maintain a procedure by which their competent authorities may determine, within a reasonable period of time after the initiation of the procedures described under Article 2.X or 2.X, whether the suspected infringing goods infringe an

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<sup>15</sup> Subject to scope

intellectual property right<sup>16</sup>.

ARTICLE 2.11: REMEDIES

1. Each Party shall provide its competent authorities with the authority to order the destruction of goods following a determination under Article 2.10 that the goods are infringing.<sup>17</sup> In cases where such goods are not destroyed, each Party shall ensure such goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder, except in exceptional circumstances.
2. 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 the release of the goods into the channels of commerce.
3. Each party may provide its competent authorities with the authority to impose administrative penalties following a determination under Article 2.10 that the goods are infringing.

ARTICLE 2.12: FEES

1. Each party shall provide that any application fee, storage fee, or destruction fee to be assessed by competent authorities in connection with procedures described in this Section shall not be used to unreasonably deter recourse to these procedures.

ARTICLE 2.13: DISCLOSURE OF INFORMATION

Without prejudice to a Party's laws pertaining to<sup>18</sup> the privacy or confidentiality of information:

- a) each Party may authorize its competent authorities to provide right holders with information about specific shipments of goods, including the description and quantity, to assist in the detection of infringing<sup>19</sup> goods;
- b) each Party may authorize its competent authorities to provide right holders with information about goods including, but not limited to, the description and quantity of the goods and the name and address of the consignor, importer, exporter or consignee, and, if known, the country of origin and name and address of the manufacturer of the goods to assist in the determination under Article 2.10 of whether goods infringe rights covered by this section;
- c) unless a Party has granted authority under subparagraph (b), at least in the case of imported goods, where competent authorities have seized or, in the

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<sup>16</sup> Subject to scope

<sup>17</sup> Subject to scope

<sup>18</sup> Negotiator's note: legal scrub pending

<sup>19</sup> Subject to scope

alternative, made a determination under Article 2.10 that goods infringe rights covered by the section, each Party shall authorize its competent authorities to provide right holders within 30 days<sup>20</sup> of seizure or determination, with information about goods including, but not limited to, the description and quantity of the goods and the name and address of the consignor, importer, exporter, or consignee, and, if known, the country of origin and name and address of the manufacturer of the goods.

### Section 3: Criminal Enforcement<sup>21</sup>

#### ARTICLE 2.14: CRIMINAL OFFENCES

1.<sup>22</sup> Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale.<sup>23</sup>

Option 1: [Kor/J: Willful trademark counterfeiting] copyright or related rights piracy on a commercial scale includes at least those infringements carried out in the context of commercial activity for direct or indirect economic or commercial advantage.]

Option 2: [EU: For the purposes of this section acts carried out on a commercial scale are those carried out in the context of commercial activity for direct or indirect economic or commercial advantage.]

[EU/Aus: Each Party may decide whether to include or exclude such acts carried out by end consumers.]

2. Each Party shall provide for criminal procedures and penalties to be applied in cases of willful importation<sup>24</sup> and domestic use, in the course of trade and on a commercial scale, of labels or packaging.<sup>25</sup>

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<sup>20</sup> For purposes of the Article, “days” shall mean “business days.”

<sup>21</sup> Negotiator's Note: Definitions of “counterfeit trademark goods” and “pirated copyright goods” provided for in footnotes [ ] and [ ] of Section 2 (Border Measures) should be used as context for this Section.

<sup>22</sup> This provision is under internal examination in the EU.

<sup>23</sup> Each Party shall treat willful importation [US/CH/NZ/Mor/Mex/Kor/J/EU/Aus/Can: or exportation] of counterfeit trademark goods or pirated copyright goods on a commercial scale [EU:, in accordance with its laws and regulations,] as unlawful activities subject to criminal penalties under this Article. A Party may comply with its obligation relating to exportation and importation of pirated copyright or counterfeit trademark goods through its measures concerning distribution.

<sup>24</sup> A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

<sup>25</sup> [CH: A Party may comply with its obligation relating to this article through its provisions concerning attempt to commit trademark offence.]



- (a) to which a mark has been applied without authorization which is identical to or cannot be distinguished from a trademark registered in its territory<sup>26</sup>; and
- (b) which are intended to be used in the course of trade on goods or in relation to services which are identical to goods or services for which the trademark is registered.

[Sing/EU reserve their position]

3. [US/J/Kor/Can: Each Party shall [Mor/NZ/Mex: may] provide criminal procedures and penalties in appropriate cases for the unauthorized copying of cinematographic works from a performance in a motion picture exhibition facility generally open to the public.]

[EU/ CH/ Sing/ NZ: delete paragraph 3]

4. The provisions of this section shall apply to aiding and abetting the offences referred to in this article.

[US/NZ/Kor/Mex/J: With respect to the offences specified in this Section, each Party shall ensure that liability for aiding and abetting is available under its law.]

5. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability, which may be criminal, of legal persons for the offences referred to in this article. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

[EU: 5.

- (a) Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for the offences referred to in Article 2.14.
- (b) Subject to the legal principles of the Party, the liability of legal persons may be criminal or [non-criminal].
- (c) Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.]

#### ARTICLE 2.15: PENALTIES

For the offences specified in 2.14.1, 2.14.2, [2.14.3], and 2.14.4, each Party shall provide penalties that include imprisonment as well a monetary fines<sup>27</sup> sufficiently high to provide a deterrent to future acts of infringement [EU:, consistently with the level of penalties applied for crimes of a corresponding gravity].

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<sup>26</sup> To be checked in legal scrub.

<sup>27</sup> It is understood that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

ARTICLE 2.16: SEIZURE, FORFEITURE AND DESTRUCTION

1. For the offences specified in Article 2.14.1, 2.14.2, [2.14.3], and 2.14.4, each Party shall provide that its competent authorities shall have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright [EU: or related rights] goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence and the assets derived from, or obtained directly or indirectly through the alleged infringing activity.

[EU consulting]

2. Where a Party requires the identification of items subject to seizure as a prerequisite for such an order that Party shall not require the items to be described in greater detail than necessary to identify them for purposes of seizure.

[EU: Each Party shall, if a prerequisite for such an order, according to its national law, is the identification of the items, ensure that the order need not determine the items that are subject to seizure in more detail than necessary to allow their identification for the purpose of the seizure.]

3. For the offences specified in Article 2.14.1, 2.14.2, [2.14.3], and 2.14.4, each Party shall provide that its competent authorities shall have the authority to order forfeiture or destruction of all counterfeit trademark goods or pirated copyright [EU: or related rights] goods, of materials and implements predominantly used in the creation of counterfeit trademark goods or pirated copyright goods, and [Aus/Can/J/Sing/CH/NZ: at least for serious offences] of the assets derived from, or obtained directly or indirectly, through the infringing activity.

4. Each Party shall [provide that its competent authorities shall have the authority to] ensure that the counterfeit trademark goods and pirated copyright goods that have been forfeited under paragraph 3 shall, if not destroyed, be disposed of outside the channels of commerce, [US/Mor: except in exceptional circumstances,] in such a manner as to avoid any harm caused to the right holder.

[Deletion of the last phrase is contingent upon retention of the first.]

5. Each Party shall further [NZ/Aus: provide that its competent authorities shall have the authority to] ensure that forfeiture and destruction under this Article shall occur without compensation of any kind to the defendant.

[NZ/Aus checking]

6. Each Party may provide that its judicial authorities have the authority to order:  
a) the seizure of assets the value of which corresponds to that of such assets derived from or obtained directly or indirectly through the allegedly

- infringing activity; and
- b) the forfeiture of assets the value of which corresponds to that of such assets derived from or obtained directly or indirectly through the infringing activity.

ARTICLE 2.17: *EX OFFICIO* CRIMINAL ENFORCEMENT

Each Party shall provide that its competent authorities may act upon their own initiative to initiate investigation or legal action [Aus/US/Mor/J/Sing/Can/NZ/Mex: in appropriate cases] with respect to the criminal offences described in Article 2.14 [EU: at least in cases of significant public interest, in accordance with national law.] [CH: at least for serious offences.]

**Section 4: Enforcement of Intellectual Property Rights in the Digital Environment**

ARTICLE 2.18 ENFORCEMENT IN THE DIGITAL ENVIRONMENT<sup>28</sup>

1. Each party shall ensure that enforcement procedures, to the extent set forth in the civil and criminal enforcement sections of this Agreement, are available under its law so as to permit effective action against an act of {US/AUS/NZ/Sing {US: trademark,} copyright or related rights} {EU/J: intellectual property rights} infringement which takes place in the digital environment, including expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringement.

2. Each Party's enforcement procedures shall provide the means to address the infringement of {US: copyright or related rights} {EU/J: intellectual property rights} in the digital environment, including infringement that occurs via technologies [US: or services] that can be used to facilitate widespread infringement.<sup>29</sup> These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with each Party's law, preserves principles relating to freedom of expression, fair process, and privacy [EU: , among other [US: fundamental] principles].<sup>30</sup>

3. Each Party shall endeavor to promote cooperative efforts within the business community to effectively address {US: copyright and related rights} {EU/J: intellectual property rights} infringement while preserving legitimate competition and consistent with each Party's law, preserving principles relating to freedom of expression, fair

<sup>28</sup> Canada reserves their right to revisit elements of this Section at a later date.

<sup>29</sup> Examples may include unlawful file sharing and unlawful streaming.

<sup>30</sup> For instance, adopting or maintaining a regime providing for limitations on the liability of, or on the remedies available against, online service providers while [US: respecting ][EU: taking into account] the legitimate interests of rightholders.

process, and privacy, [EU: among other [US: fundamental] principles].

4. Each Party may provide, in accordance with its laws and regulations, that its competent authorities have the authority to order an online service provider to disclose expeditiously the information of the relevant subscriber to the right holders, who have given legally sufficient claim with valid reasons to be infringing their {US: copyright or related rights} {J/EU: intellectual property rights}. [US/J/NZ: Each Party may provide, in accordance with its laws and regulations, its competent authorities with the authority to order an online service provider to disclose expeditiously to a right holder, or to a person authorized by the right holder,<sup>31</sup> information sufficient to identify an alleged infringer, where that right holder has filed a legally sufficient claim of infringement of {US: copyright or related rights} {J/EU: intellectual property rights} and where such information is being sought for the purpose of protecting or {enforcing the right holder's {US: copyright or related rights} {J/EU: intellectual property rights}.]

5. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures<sup>32</sup> that are used by [Kor/US/CH/Aus/J/Sing/NZ: at least] authors, and [US: performers] and producers of phonograms in connection with the exercise of their [US/Kor/NZ: copyright [US/KOR: or related] rights [Can/EU/CH: under the WCT and WPPT] and that restrict acts in respect of their works, [performances] [Can: fixed in phonogram], and phonograms, which are not authorized by the authors, the [performers] or the producers of phonograms concerned or permitted by law.

[6. US/NZ/J: In order to provide such adequate legal protection and effective legal remedies, each Party shall provide protection at least [EU/J/CH: in appropriate cases of the following activities] [J/EU: to the extent provided by its law]<sup>33</sup> against:

(a) the unauthorized circumvention of an effective technological measure [US/Sing/Aus: that controls access to a protected work, performance or phonogram and is] carried out knowingly [US: or with reasonable grounds to

<sup>31</sup> Right holder definition must be clarified

<sup>32</sup> Option1 [EU/NZ/J: [J: The definition of] Effective technological measures shall be [NZ: defined by] [J/EU/Can: left to] each Party. The definition shall [at least] cover copy controls [J/CH: and access controls]].

Option 2 [US/Aus/Sing/Kor/Mor/Can: [US/Aus/Sing/Kor/Mor: Effective] technological measure means any technology, device or component that, in the normal course of its operation, controls access to a protected work, [performance], phonogram, {or other protected subject matter}, or protects any copyright {or related rights}.] [NZ/Sing: For the avoidance of doubt, it does not include any technology, device or component that controls access to a protected work or phonogram for non-infringing purposes, such as a device that solely controls geographic market segmentation by preventing the playback of a non-infringing copy of an audiovisual work.] [US: A Party is not required to treat as an effective technological measure a measure that solely controls geographic market segmentation by preventing the playback of a non-infringing copy of an audiovisual work.]

<sup>33</sup> For Japan, the addition of this option could allow the elimination of the remaining brackets in this chapeau and sub(a).

know]; and  
[NZ/EU/CH: propose to keep chapeau, delete(a)]  
(b) the manufacture, importation, [or] distribution [US/NZ: of, or provision of] a device, product, [US/Sing/Ch [US: technology] or service] [J/EU: that is capable of circumventing an effective technological measure and is either:]  
(i) primarily designed or produced for the purpose of circumventing an effective technological measure; or  
(ii) has only a limited commercially significant purpose other than circumventing an effective technological measure.]; and  
(c) the offering to the public by marketing of a device, product, or [US/Sing/CH: [US: technology] or service] as a means of circumventing an effective technological measure.]

[J: propose to delete (c).]

[Note to legal reviewers: (a), (b) and (c) are meant to be three separate items for which protection should be provided.]

[EU reserves its position on article 6.]

7. [US/Sing/NZ/Aus: Each Party shall provide that a violation of a measure implementing paragraph (5 and 6) is an independent unlawful activity that does not require [J: any other] [US/Sing/NZ/Aus: an] infringement of copyright {US/Sing/Aus: or related rights}.<sup>34</sup>]

[EU proposes deletion of paragraph 7.]

8. To protect electronic rights management information,<sup>35</sup> each Party shall provide adequate legal protection and effective legal remedies against any person knowingly

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<sup>34</sup> The obligations in paragraphs (5) and (6) are without prejudice to the rights, limitations, exceptions, or defenses to copyright or related rights infringement. Further, in implementing paragraphs (5) and (6), no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measures implementing paragraph (5).

<sup>35</sup> For purposes of this Article, electronic rights management information means:

(a) information that identifies a work, [KOR/CH: or other protected subject matters of copyrights or related rights] performance, or phonogram; the author [of the work, the performer of the performance, or the producer of the phonogram] [KOR/CH: or the right holders of any of copyright or related rights]; or the owner of any right in the work, performance or phonogram;  
(b) information about the terms and conditions of the use of the work, performance, or phonogram [KOR/CH: or other protected subject matters of copyright or related rights]; or  
(c) any numbers or codes that represent the information described in (a) or (b) above, when any of these items is attached to a copy of the work, performance, or phonogram [KOR/CH: or other protected subject matters of copyrights or related rights] or appears in connection with the communication or making available of a work, performance, or phonogram [KOR/CH: or other protected subject matters of copyrights or related rights ] to the public.

performing without authority 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 copyright or [Can: with respect to phonograms any] related right:

- (a) to remove or alter any electronic right management information
- (b) to distribute, import for distribution, broadcast, communicate, or make available to the public copies of works, performances, or phonograms [KOR/CH: or other protected subject matters of copyrights or related rights], knowing that electronic rights management information has been removed or altered without authority.

9. Each Party may adopt and maintain exceptions or limitations to measures implementing paragraphs (5), (6) and (8), so long as they do not significantly impair the adequacy of legal protection of technological measures or electronic rights management information or the effectiveness of legal remedies for violations of those implementation measures.

[EU proposes deletion of paragraph 9.]

### **CHAPTER THREE ENFORCEMENT PRACTICES**

#### ARTICLE 3.1: ENFORCEMENT EXPERTISE, INFORMATION AND DOMESTIC COORDINATION

1. Each Party shall encourage the development of specialized expertise within its competent authorities responsible for enforcement of intellectual property rights.
2. Each Party shall promote collection and analysis of statistical data and other relevant information concerning infringements of intellectual property rights as well as collection of information on best practices to prevent and combat those infringements.
3. Each Party shall, as appropriate, promote internal coordination among, and facilitate joint actions by, its competent authorities responsible for enforcement of intellectual property rights.
4. Each Party shall endeavor to promote, where appropriate, the establishment and maintenance of formal or informal mechanisms, such as advisory groups, whereby its competent authorities may hear the views of right holders and other relevant stakeholders.

#### ARTICLE 3.2: MANAGEMENT OF RISK AT BORDER

1. In order to enhance the effectiveness of border enforcement of intellectual property rights, the appropriate competent authorities of each Party may:

- (a) consult with the relevant stakeholders and the appropriate competent authorities of other Parties responsible for enforcement of intellectual property rights to identify and address significant risks and promote actions to mitigate those risks;
- (b) share information with the appropriate competent authorities of other Parties on border enforcement of intellectual property rights, including relevant information to better identify and target shipments for inspection.

2. Where a Party seizes imported goods infringing intellectual property rights, the Party's competent authorities may provide the Party of export with information necessary for identification of the parties and goods involved in the exportation of the seized goods. The competent authorities of the Party of export may take action against these parties and future shipments in accordance with its laws.

ARTICLE 3.3: TRANSPARENCY/PUBLICATION OF ENFORCEMENT PROCEDURES AND PRACTICES

For the purposes of promoting transparency in the administration of its intellectual property rights enforcement system, each Party shall take appropriate measures, pursuant to its domestic laws and policies, to publish or make available to the public information on:

- (a) procedures available regarding the enforcement of intellectual property rights including competent authorities for enforcement of intellectual property rights and contact points for assistance;
- (b) relevant laws, regulations, final judicial decisions and administrative rulings of general application pertaining to enforcement of intellectual property rights; and
- (c) efforts to ensure effective enforcement and protection system of intellectual property rights.

ARTICLE 3.4: PUBLIC AWARENESS

Each Party shall, as appropriate, promote the adoption of measures to enhance public awareness of the importance of respecting intellectual property rights and the detrimental effects of intellectual property rights infringement.

ARTICLE 3.5: ENVIRONMENTAL MATTERS

[US/J/Sing/EU/Mor/CH/Kor: Each Party shall endeavor to [US/J/Sing/Mor/CH/Kor: consider] [Aus: consistent with each Party's laws and regulations] [EU: take] environmental matters [EU: into account] where goods infringing intellectual property rights are to be destroyed in accordance with the provisions of this Agreement.]

**CHAPTER FOUR**  
**INTERNATIONAL COOPERATION<sup>36</sup>**

ARTICLE 4.1: INTERNATIONAL COOPERATION

1. Each Party recognizes that international cooperation is vital to realize effective protection of intellectual property rights and should be encouraged regardless of the origin of the goods infringing intellectual property rights, or the location or nationality of the right holder.

2. In order to combat intellectual property rights infringement, in particular, trademark counterfeiting and copyright piracy, each Party shall promote cooperation, where appropriate, among the competent authorities of the Parties responsible for enforcement of intellectual property rights. Such cooperation may include law enforcement cooperation with respect to criminal enforcement and border measures covered by this Agreement.

3. Each Party understands that cooperation under this Chapter shall be conducted consistent with relevant international agreements as well as subject to the domestic laws, policies, resource allocation and law enforcement priorities of the Parties.

ARTICLE 4.2: INFORMATION SHARING

Each Party shall endeavor to exchange with other Parties the following:

- (a) information collected by a Party under provisions of Chapter 3, including statistical data and information on best practices;
- (b) information on legislative and regulatory measures by a Party related to the protection and enforcement of intellectual property rights; and
- (c) other information as appropriate and mutually agreed.

ARTICLE 4.3: CAPACITY BUILDING AND TECHNICAL ASSISTANCE

1. Each Party shall endeavor to provide on request and on mutually agreed terms and conditions, assistance in capacity building and technical assistance in improving enforcement of intellectual property rights for Parties to this Agreement and, where appropriate, for prospective Parties to this Agreement. Such capacity building and technical assistance may cover such areas as:

- (a) enhancement of public awareness on intellectual property rights;
- (b) development and implementation of national legislation related to enforcement of intellectual property rights;
- (c) training of officials on enforcement of intellectual property rights; and

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<sup>36</sup> Subject to scope.



- (d) coordinated operations conducted at the regional and multilateral levels.
- 2. For the purposes of paragraph 1, each Party shall endeavor to work closely with other Parties and, where appropriate, countries or separate customs territories not a Party to this Agreement.
- 3. Each Party may undertake the activities described in this Article in conjunction with relevant private sector or international organizations. Each Party shall strive to avoid unnecessary duplication of the activities described in this Article with respect to other international efforts.<sup>37</sup>

**CHAPTER FIVE**  
**INSTITUTIONAL ARRANGEMENTS**

ARTICLE 5.1: THE ACTA COMMITTEE

- 1. The Parties hereby establish the ACTA Committee and each Party shall be represented on that Committee.
- 2. The Committee shall:
  - (a) review the implementation and operation of this Agreement;
  - (b) consider matters concerning the development of this Agreement
  - (c) consider in accordance with Article 6.4 any proposed amendments to this Agreement;
  - (d) approve in accordance with Article 6.5.2 the terms of accession to this Agreement of any Member of the WTO seeking to become Party to this Agreement; and
  - (e) consider any other matter that may affect the implementation and operation of this Agreement.
- 3. The Committee may decide to:
  - (a) establish ad hoc committees or working groups to assist the Committee in carrying out its responsibilities under paragraph 2, as well as, upon request, to assist prospective parties in joining this Agreement;
  - (b) seek the advice of non-governmental persons or groups;
  - (c) make recommendations regarding implementation and operation of the Agreement, including endorsing best practice guidelines related thereto;
  - (d) share with third parties information and best practices on reducing intellectual property rights infringements, including techniques for identifying and monitoring piracy and counterfeiting; and
  - (e) take such other action in the exercise of its functions as the Committee may decide.

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<sup>37</sup> Language to be reviewed by legal experts.

4.(a) The Committee shall adopt its rules and procedures within a reasonable period of time after entry into force of the Agreement, and shall invite those signatories that are not yet Parties to participate in the Committee's deliberations on rules and procedures.

(i) Such rules and procedures shall include provisions with respect to chairing and hosting meetings, performance of organizational duties relevant to the Agreement and its operation,

(ii) Such rules and procedures may include provisions with respect to granting observer status, and any other matter the Committee decides necessary for its proper operation.

(b) The Committee may amend the rules and procedures.

(c) Notwithstanding paragraph 5, during the first five years following entry into force of the Agreement, the Committee may adopt or amend its rules or procedures upon the consensus of the signatories, including those signatories that are not yet Parties to the Agreement.

(d) After the period specified in subparagraph (c), the Committee may adopt or amend rules or procedures upon the consensus of the Parties to the Agreement.

(e) Notwithstanding subparagraph (d), the Committee may decide that the adoption or amendment of a particular rule or procedure requires consensus of the signatories, including those signatories that are not yet Parties to the Agreement.

5. All decisions of the Committee shall be taken by consensus, except as the Committee may otherwise decide by consensus. The committee shall be deemed to have acted by consensus on a matter submitted for its consideration, if no Party present at the meeting when the decision is taken formally objects to the proposed decision. The working language of the Committee shall be English.

6. The Committee shall convene at least once every year unless the Committee decides otherwise. The first meeting of the Committee shall be held within a reasonable period of time after entry into force of this Agreement, pursuant to Article 6.2.1.

7. For greater certainty, the Committee shall not oversee or supervise domestic or international enforcement or criminal investigations of specific intellectual property cases.

8. The Committee shall strive to avoid unnecessary duplication of other international efforts regarding the enforcement of intellectual property rights.

#### ARTICLE 5.2: CONTACT POINTS

1. Each Party shall designate a contact point to facilitate communications among the Parties on any matter covered by this Agreement.
2. On the request of a Party, the contact point of another Party shall identify an appropriate office or official and assist, as necessary, in facilitating communication between the office or official concerned and the requesting Party.

ARTICLE 5.3: CONSULTATION

1. Each Party may request in writing consultations with another Party with respect to any matter affecting the implementation of this Agreement. The requested Party shall accord sympathetic consideration to such a request, provide a response, and afford adequate opportunity for such consultations.
  2. Any such consultations, including particular positions taken by Parties therein, shall be confidential, and without prejudice to the rights of either Party in any other proceeding, including ones under the auspices of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.
2. The Parties may by mutual agreement notify the result of consultations referred to in this Article to the Committee.

[US: Article 5.x]

Option 1

[US: The European Union, in matters within its competence, shall exercise any right to vote that it may have with a number of votes equal to the number of its member States that are Parties to this Agreement. The European Union shall not exercise its right to vote if at least one of its member States exercises theirs and vice versa.]

Option 2

[EU (placeholder) for language along the following lines: Where the European Union exercises its right to vote, it shall have a number of votes equal to the number of its member states which are Parties to this Agreement. The number of votes of the European Union and its member states shall in no case exceed the number of member states of the European Union.]

**CHAPTER SIX**  
**FINAL PROVISIONS**

ARTICLE 6.1: SIGNATURE

This Agreement shall remain open for signature by participants in its negotiation<sup>38</sup> from [date] until [date] at the Depository. Note: the dates will reflect a 2 year period.

ARTICLE 6.2: ENTRY INTO FORCE OF THE AGREEMENT

1. This Agreement shall entry into force 30 days after the deposit of the sixth instrument of ratification, acceptance, or approval as between those signatories which have deposited their respective instruments of ratification, acceptance or approval.
2. For each signatory that deposits its instrument of ratification, acceptance, or approval after the deposit of the sixth instrument of ratification, acceptance or approval, this Agreement shall enter into force for that signatory signatory 30 days after the date of deposit of its instrument of ratification, acceptance or approval.

ARTICLE 6.3: WITHDRAWAL

A Party may withdraw from this Agreement by means of a written notification to the Depository. Such withdrawal shall take effect 180 days after the notification is received by the Depository.

ARTICLE 6.4: AMENDMENTS

1. Each Party may propose amendments to this Agreement to the Committee. The Committee shall decide whether to present a proposed amendment to the Parties for acceptance, ratification, or approval.
2. Such amendment shall enter into force 90 days after the date that all the Parties have deposited their respective instruments of acceptance, ratification or approval with the Depository.

ARTICLE 6.5: BECOMING PARTY TO THE AGREEMENT

1. After the expiration of the period provided in Article 6.1, any Member of the WTO may apply to accede to this Agreement.
2. The Committee shall decide upon the terms of accession for each applicant.
3. The applicant shall become a Party to this Agreement 30 days after the deposit of its instrument of acceptance, ratification or approval of those terms of accession with the Depository.

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<sup>38</sup> Which shall comprise Australia, Austria, Belgium, Bulgaria, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, the Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, Morocco, the Netherlands, New Zealand, Poland, Portugal, Romania, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, the United Mexican States, the United States, and the European Union.

CONFIDENTIAL

ARTICLE 6.6: TEXTS OF THE AGREEMENT

This Agreement shall be [signed in a single official copy in the English language] [Can: signed in the English and French languages, both copies being equally authentic] and copies established in the [insert name(s) of language(s)].

[Mex: Depending on resolution of the French language issue, other languages may be proposed].

ARTICLE 6.7: DEPOSITARY

[Name] shall be the Depositary of this Agreement.