

**CHAPTER 15**  
**INTELLECTUAL PROPERTY**

**Section A**  
**General Provisions**

**Article 15.1**  
**Definitions**

1. For the purposes of this Chapter:

“Berne Convention” means the Berne Convention for the Protection of Literary and Artistic Works, done at Berne on 9 September 1886, as revised at Paris on 24 July 1971 and amended on 28 September 1979;

“broadcasting” means the transmission by wire or wireless means, including by satellite, for public reception of sounds or of images and sounds or of the representations thereof, and including transmission of encrypted signals if the means for decrypting are provided to the public by the transmitting broadcasting organisation or with its consent, and “broadcast” shall be construed accordingly;

“Budapest Treaty” means the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), done at Budapest on 28 April 1977, as amended on 26 September 1980;

“Declaration on TRIPS and Public Health” means the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2), adopted on 14 November 2001;

“fixation” means the embodiment of sounds or moving images or representations thereof, in each case, from which they can be perceived, reproduced or communicated through a device;

“Hague Agreement” means the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, done at Geneva on 2 July 1999;

“intellectual property” refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement;

“Locarno Agreement” means the Locarno Agreement Establishing an International Classification for Industrial Designs, done at Locarno on 8 October 1968, as amended on 28 September 1979;

“Madrid Protocol” means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, done at Madrid on 27 June 1989;

“Marrakesh Treaty” means the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, done at Marrakesh on 27 June 2013;

“Nice Agreement” means the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957;

“Paris Convention” means the Paris Convention for the Protection of Industrial Property, done at Paris on 20 March 1883 as revised at Stockholm on 14 July 1967;

“PCT” means the Patent Cooperation Treaty, done at Washington on 19 June 1970, as amended on 28 September 1979, and modified on 3 February 1984 and on 3 October 2001;

“performers” means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore, and “performances” shall be construed accordingly;

“phonogram” means the fixation of the sounds of a performance or of other sounds other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;

“PLT” means the Patent Law Treaty adopted by the WIPO Diplomatic Conference, done at Geneva on 1 June 2000;

“producer of a phonogram” means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;

“rights management information” means:

- (a) information that identifies a work, performance, or phonogram, the author, performer of the performance, the producer of a phonogram, or any other right holder with respect to the work, performance, or phonogram;
- (b) information about the terms and conditions of use of the work, performance, or phonogram; or
- (c) any numbers or codes that represent the information described in subparagraphs (a) and (b),

when any of these items of information is attached to a copy of the work, performance or phonogram, or appears in connection with the communication or making available of a work, performance, or phonogram to the public;

with respect to copyright and related rights, “right to authorise or prohibit” refers to exclusive rights;

“Rome Convention” means the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961;

“Singapore Treaty” means the Singapore Treaty on the Law of Trademarks, done at Singapore on 27 March 2006;

“TIPRIC” means the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989;

“trade secret” means information that:

- (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) has commercial value because it is secret; and
- (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

“trade secret holder” means any person lawfully in control of a trade secret;

“UPOV 1991” means the International Convention for the Protection of New Varieties of Plants, done at Paris on 2 December 1961, as revised at Geneva on 19 March 1991;

“WCT” means the WIPO Copyright Treaty, done at Geneva on 20 December 1996;

“WIPO” means the World Intellectual Property Organization;

for greater certainty, “work” includes a cinematographic work, photographic work, and computer program; and

“WPPT” means the WIPO Performances and Phonograms Treaty, done at Geneva on 20 December 1996.

2. For the purposes of Article 15.8 (National Treatment) and Article 15.31 (Procedures for the Recognition and Protection of Geographical Indications):

“a national” means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the

agreements listed in Article 15.7 (International Agreements) or the TRIPS Agreement.

## **Article 15.2**

### **Objectives**

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

## **Article 15.3**

### **Principles**

1. A Party may, in formulating or amending its 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 those measures are consistent with the provisions of this Chapter.
2. Appropriate measures, provided that they are consistent with the provisions of this Chapter, 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.

## **Article 15.4**

### **Understandings in Respect of this Chapter**

Having regard to the underlying public policy objectives of national systems, the Parties recognise the need to:

- (a) promote innovation and creativity;
- (b) facilitate the diffusion of information, knowledge, technology, culture, and the arts; and
- (c) foster competition and open and efficient markets,

through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, service providers, users, and the general public.

**Article 15.5**  
**Nature and Scope of Obligations**

1. The Parties affirm their existing rights and obligations with respect to each other under the TRIPS Agreement.
2. The Parties recognise the importance of adequate, effective and balanced protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade.
3. Each Party shall give effect to this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene this Chapter. Each Party shall be free to determine the appropriate method of implementing this Chapter within its own legal system and practice.

**Article 15.6**  
**Understandings Regarding Certain Public Health Measures**

1. The Parties affirm the Declaration on TRIPS and Public Health. In particular, the Parties have reached the following understandings regarding this Chapter:
  - (a) the Parties affirm the right to fully use the flexibilities as duly recognised in the Declaration on TRIPS and Public Health;
  - (b) the Parties agree that this Chapter does not and should not prevent a Party from taking measures to protect public health; and
  - (c) the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all.
2. In recognition of the Parties' commitment to access to medicines and public health, this Chapter does not and should not prevent the effective utilisation of Article 31*bis* of the TRIPS Agreement, and the Annex and Appendix to the Annex to the TRIPS Agreement.
3. The Parties recognise the importance of contributing to the international efforts to implement Article 31*bis* of the TRIPS Agreement, and the Annex and Appendix to the Annex to the TRIPS Agreement.

## **Article 15.7**

### **International Agreements**

Each Party affirms that it has ratified or acceded to the following agreements:

- (a) TRIPS Agreement;
- (b) Paris Convention;
- (c) Berne Convention;
- (d) Rome Convention;
- (e) WCT;
- (f) WPPT;
- (g) Marrakesh Treaty;
- (h) Madrid Protocol;
- (i) Nice Agreement;
- (j) Singapore Treaty;
- (k) Budapest Treaty;
- (l) UPOV 1991;
- (m) PCT; and
- (n) PLT.

## **Article 15.8**

### **National Treatment**

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection<sup>1</sup> of intellectual property rights subject to the exceptions already provided for in, respectively, the Paris Convention, the Berne Convention, the Rome Convention, the WPPT, and the TIPRIC. In respect of performers, producers

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<sup>1</sup> For the purposes of this paragraph, “protection” shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter.

of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided under this Agreement.

2. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that this derogation is:
  - (a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and
  - (b) not applied in a manner that would constitute a disguised restriction on trade.
3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

#### **Article 15.9 Transparency**

1. Each Party shall endeavour to publish online its laws, regulations, procedures, and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.
2. Each Party shall, subject to its law, endeavour to publish online information that it makes public concerning applications for trade marks, geographical indications, registered designs, patents, and plant variety rights.<sup>2, 3</sup>
3. Each Party shall, subject to its law, publish online information that it makes public concerning registered or granted trade marks, geographical indications, designs, patents, and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights.<sup>4</sup>

#### **Article 15.10 Application of Chapter to Existing Subject Matter and Prior Acts**

1. Unless otherwise provided in this Chapter, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement and that is protected on that date in the territory of a

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<sup>2</sup> For greater certainty, paragraphs 2 and 3 are without prejudice to a Party's obligations under Article 15.27 (Electronic Trade Marks Systems).

<sup>3</sup> For greater certainty, paragraph 2 does not require a Party to publish online the entire dossier for the relevant application.

<sup>4</sup> For greater certainty, paragraph 3 does not require a Party to publish online the entire dossier for the relevant registered or granted intellectual property right.

Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

2. Unless otherwise provided in this Chapter, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its territory.
3. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

#### **Article 15.11** **Exhaustion of Intellectual Property Rights**

Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system.

#### **Article 15.12** **Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions**

The Parties affirm their commitment to work together through discussion and by the exchange of information at the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

#### **Section B** **Cooperation**

#### **Article 15.13** **Contact Points for Cooperation**

Each Party may designate and notify the other Party of one or more contact points for the purpose of cooperation under this Section.

#### **Article 15.14** **Cooperation**

The Parties shall endeavour to cooperate on the subject matter covered by this Chapter, including through appropriate coordination, and exchange of information between the relevant agencies of the Parties. The areas of cooperation may include:

- (a) the establishment of arrangements between each Party's respective collecting societies;
- (b) engagement with SMEs regarding the use, protection and enforcement of intellectual property rights which may include public-private engagement with SMEs;
- (c) education and awareness relating to the protection and enforcement of intellectual property rights;
- (d) cooperation on aspects of intellectual property policy and law with the aim of supporting the development and deployment of environmental and low-emissions technologies, clean and renewable energy and enabling infrastructure, and energy-efficient goods and services;
- (e) best practices, projects, and programmes aimed at reducing intellectual property rights infringement, including:
  - (i) coordination to prevent exports of counterfeit goods, including with other countries;
  - (ii) sharing of experience of intellectual property rights enforcement between customs, law enforcement and judicial bodies;
  - (iii) public education and awareness activities on the impact of intellectual property infringement; and
  - (iv) voluntary stakeholder initiatives to reduce intellectual property infringement, including over the internet; and
- (f) activities for improving the international intellectual property regulatory framework.

**Article 15.15**  
**Committee on Intellectual Property Rights**

1. The Parties hereby establish a Committee on Intellectual Property Rights ("IPR Committee"), composed of government representatives of each Party.
2. The IPR Committee shall consider matters relating to the implementation and operation of this Chapter, including consultations and reviews under Articles 15.32 (System and Standard of Protection for Geographical Indications), 15.33 (Protection of Geographical Indications), and 15.34 (Consultations on Geographical Indications).

3. The IPR Committee shall:
  - (a) exchange information, pertaining to intellectual property rights matters, including how intellectual property protection contributes to innovation, creativity, economic growth, and employment, and this may include information relating to:
    - (i) developments in domestic and international intellectual property law and policy;
    - (ii) economic benefits related to trade and other analysis of the contributions arising from the protection and enforcement of intellectual property rights;
    - (iii) intellectual property issues particularly relevant to SMEs including affordable and accessible justice; science, technology, and innovation activities; and to the generation, transfer, and dissemination of technology;
    - (iv) approaches for reducing the infringement of intellectual property rights, as well as effective strategies for removing the underlying incentives for infringement; and
    - (v) implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of WIPO;
  - (b) promote collaborative operations in customs and exchange of best practices;
  - (c) report its findings and the outcomes of its discussions to the Joint Committee; and
  - (d) carry out other functions as may be delegated by the Joint Committee.
4. The IPR Committee shall, in relation to geographical indications:
  - (a) enter into consultations and conduct reviews pursuant to Articles 15.32 (System and Standard of Protection for Geographical Indications), 15.33 (Protection of Geographical Indications), and 15.34 (Consultations on Geographical Indications);
  - (b) report the outcomes of those consultations and reviews to the Joint Committee;
  - (c) monitor the implementation of amendments to this Agreement, pursuant to Section D (Geographical Indications); and

- (d) provide a forum for coordination and exchange of views on issues related to Section D (Geographical Indications).
5. The IPR Committee shall meet as necessary to carry out its functions pursuant to Articles 15.32 (System and Standard of Protection for Geographical Indications), 15.33 (Protection of Geographical Indications), and 15.34 (Consultations on Geographical Indications); and otherwise shall meet within one year after the date of entry into force of this Agreement and thereafter as agreed by the Parties.

### **Article 15.16 Patent Cooperation and Work Sharing**

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems as well as simplifying and streamlining the procedures and processes of their respective patent offices to the benefit of all users of the patent system and the public as a whole.
2. Further to paragraph 1, the Parties shall endeavour to cooperate between their respective patent offices to facilitate the sharing and use of search and examination work of the Parties. This may include:
  - (a) making search and examination results available to the patent office of the other Party;<sup>5</sup> and
  - (b) exchanging information on quality assurance systems and quality standards relating to patent examination.
3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to cooperate to reduce differences in the procedures and processes of their respective patent offices.

### **Article 15.17 Public Domain**

The Parties recognise the importance of a rich and accessible public domain.

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<sup>5</sup> The Parties recognise the importance of multilateral efforts to promote the sharing and use of search and examination results with a view to improving the quality of search and examination processes and to reducing the costs for both applicants and patent offices.

**Article 15.18**  
**Cooperation in the Area of Traditional Knowledge Associated with Genetic Resources**

1. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources.
2. The Parties shall endeavour to pursue quality patent examination, which may include:
  - (a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;
  - (b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources; and
  - (c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources.

**Article 15.19**  
**Cooperation on Request**

Cooperation activities undertaken under this Chapter are subject to the availability of resources, and on request, and on terms and conditions mutually decided upon between the Parties.

**Section C**  
**Trade Marks**

**Article 15.20**  
**Types of Signs Registrable as Trade Marks**

Neither Party shall require as a condition of registration that a sign be visually perceptible. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trade mark.

**Article 15.21**  
**Collective and Certification Marks**

Each Party shall provide that trade marks include collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in its laws and regulations, provided that those marks are protected. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trade mark system.<sup>6</sup>

**Article 15.22**  
**Rights Conferred**

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

**Article 15.23**  
**Exceptions**

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

**Article 15.24**  
**Well-Known Trade Marks**

Each Party shall provide for the protection of well-known trade marks as referred to in Article 6*bis* of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement. Each Party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO, 20 to 29 September 1999.

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<sup>6</sup> Any sign or combination of signs shall be eligible for protection under one or more of the legal means for protecting geographical indications, or a combination of those means.

**Article 15.25**  
**Procedural Aspects of Examination, Opposition and Cancellation**

Each Party shall provide a system for the examination and registration of trade marks which includes among other things:

- (a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trade mark;
- (b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trade mark;
- (c) providing an opportunity to oppose the registration of a trade mark and an opportunity to seek cancellation<sup>7</sup> of a trade mark through, at a minimum, administrative procedures; and
- (d) requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which may be provided by electronic means.

**Article 15.26**  
**Bad Faith Applications**

Each Party shall provide that its competent authority has the authority to refuse an application or cancel a registration where the application to register the trade mark was, according to its laws and regulations, made in bad faith.

**Article 15.27**  
**Electronic Trade Marks Systems**

Further to Article 15.9 (Transparency), each Party shall provide:

- (a) a system for the electronic application for, and maintenance of, trade marks; and
- (b) a publicly available electronic information system, including an online database, of trade mark applications and of registered trade marks.

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<sup>7</sup> For greater certainty, cancellation for the purposes of this Section may be implemented through invalidation or revocation proceedings.

**Article 15.28**  
**Term of Protection for Trade Marks**

Each Party shall provide that initial registration and each renewal of registration of a trade mark is for a term of no less than 10 years.

**Article 15.29**  
**Efforts toward the Harmonisation of Trade Mark Systems**

The Parties recognise the importance of reducing differences in law and practice between the Parties' respective systems for the protection of trade marks. In addition, each Party shall endeavour to participate in international trade mark harmonisation efforts, including the WIPO fora dealing with reform and development of the international trade mark system.

**Article 15.30**  
**Domain Names**

1. In connection with each Party's system for the management of its country-code top-level domain (ccTLD) domain names, the Parties recognise the benefits of appropriate remedies being available at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trade mark.
2. The Parties understand that those remedies may, but need not, include, among other things; revocation, cancellation, transfer, damages, or injunctive relief.

**Section D**  
**Geographical Indications**

**Article 15.31**  
**Procedures for the Recognition and Protection of Geographical Indications**

1. The Parties recognise that geographical indications may be protected through a trade mark or *sui generis* system, or other legal means.
2. In providing recognition and protection for geographical indications each Party shall:
  - (a) provide transparent recognition and protection procedures which are readily available and understandable to the public;

- (b) accept applications or petitions for recognition and protection without requiring intercession by a Party on behalf of its nationals;
- (c) provide an administrative process to verify that a term being proposed for protection meets the relevant requirements as set out in the laws and regulations of that Party;
- (d) publish the geographical indication proposed for recognition and protection;
- (e) provide procedures to object to recognition and protection and for recognition and protection to be refused or otherwise not afforded. The grounds of objection shall include the following:
  - (i) the proposed geographical indication conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the good; or
  - (ii) the proposed geographical indication is the term customary in common language as the common name for the good concerned in the territory of that Party; and
- (f) provide procedures for the cancellation<sup>8</sup> or invalidation of recognition and protection.

### **Article 15.32**

#### **System and Standard of Protection for Geographical Indications**

1. If Australia enters into an international agreement with a non-party that:
  - (a) enters into force after the date this Agreement is signed by both Parties; and
  - (b) includes obligations<sup>9</sup> concerning a system or standard of protection for geographical indications for spirits, agricultural products or foodstuffs that is different to that in effect in Australia upon entry into force of this Agreement, that system or standard being “a new standard of protection”,<sup>10</sup>

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<sup>8</sup> For greater certainty, cancellation for the purposes of this Section may be implemented through nullification or revocation proceedings.

<sup>9</sup> For greater certainty, “obligations” in the relevant international agreement shall be read to include any limitations or exceptions that may apply to those obligations under that international agreement and does not refer to obligations in respect of individual geographical indications of the non-party.

<sup>10</sup> For the purposes of this Section, “protection” shall include, matters affecting the availability, acquisition, scope, maintenance, and enforcement of geographical indications as well as those matters affecting the use of geographical indications specifically addressed in this Agreement.

the Parties shall enter into consultations as soon as reasonably practicable after the date of entry into force of the non-party agreement and no later than four months after the date of that event, to review this Section with a view to amending this Agreement so that no less favourable treatment is applied under this Section in relation to the protection of geographical indications. That review shall be undertaken through the IPR Committee pursuant to Article 15.15 (Committee on Intellectual Property Rights).

2. If this Agreement had not yet entered into force by the date the Parties would otherwise have been required to enter into consultations pursuant to paragraph 1, the Parties shall enter into consultations as soon as reasonably practicable after the date of entry into force of this Agreement, and no later than four months after the date of that event, to review this Section with a view to amending this Agreement so that no less favourable treatment is applied under this Section in relation to the protection of geographical indications. That review shall be undertaken through the IPR Committee pursuant to Article 15.15 Committee on Intellectual Property Rights).

### **Article 15.33 Protection of Geographical Indications**

If Australia enters into an international agreement with a non-party that enters into force after the date this Agreement is signed by both Parties, and that protects specific geographical indications for spirits, agricultural products or foodstuffs to a new standard of protection then:

- (a) the United Kingdom may provide to Australia a list of specific geographical indications for spirits, agricultural products and foodstuffs that it seeks to be protected in Australia;
- (b) Australia shall examine and publish for opposition those geographical indications under its domestic requirements as soon as reasonably practicable following receipt of the United Kingdom's list;
- (c) in accordance with this Section, and subject to those geographical indications satisfying Australia's domestic requirements for the protection of a geographical indication to the new standard of protection, Australia shall protect those geographical indications to the new standard of protection; and
- (d) the Parties shall then enter into consultations as soon as reasonably practicable following Australia's examination and objections process relating to the list of United Kingdom geographical indications under its domestic requirements and no later than four months after the date of that event, to consider amendments to this Agreement, with a view to including a list in an Annex to this Agreement to indicate the United Kingdom geographical indications which are protected in

Australia. That review shall be undertaken through the IPR Committee pursuant to Article 15.15 (Committee on Intellectual Property Rights).

**Article 15.34**  
**Consultations on Geographical Indications**

If, no later than two years following the date of entry into force of this Agreement, an agreement meeting the criteria described in Article 15.32 (System and Standard of Protection for Geographical Indications) has not entered into force, the Parties shall review this Section with a view to considering further provisions governing the protection or recognition of geographical indications. Such a review shall consider the Parties' interests and sensitivities concerning the protection of geographical indications for spirits, agricultural products, and foodstuffs. That review may be undertaken through the IPR Committee pursuant to Article 15.15 (Committee on Intellectual Property Rights).

**Article 15.35**  
**Amendments Relating to Geographical Indications**

Amendments relating to geographical indications shall enter into force in accordance with Article 32.2 (Amendments – Final Provisions).

**Section E**  
**Patents and Data**

**Article 15.36**  
**Rights Conferred**

1. A patent shall confer on its owner the following exclusive rights:
  - (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing for these purposes that product;
  - (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

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

### **Article 15.37** **Patentable Subject Matter**

1. Subject to paragraphs 2 and 3, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step and is capable of industrial application.<sup>11</sup>
2. A Party may exclude from patentability inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law.
3. A Party may also exclude from patentability:
  - (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
  - (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.

### **Article 15.38** **Exceptions**

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

### **Article 15.39** **Experimental Use**

Without limiting Article 15.38 (Exceptions), each Party shall provide that any person may do an act that would otherwise infringe a patent if the act is done for experimental purposes relating to the subject matter of a patented invention.

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<sup>11</sup> For the purposes of this Article, a Party may deem the terms “inventive step” and “capable of industrial application” to be synonymous with the terms “non-obvious” and “useful” respectively.

**Article 15.40**  
**Regulatory Review Exception**

Without prejudice to the scope of, and consistent with, Article 15.38 (Exceptions), each Party:

- (a) shall provide that a third person may do an act that would otherwise infringe a patent with respect to a pharmaceutical product invention if the act is done for purposes connected with obtaining regulatory approval<sup>12</sup> in that Party or another country or both; and
- (b) may provide that a third person may do an act that would otherwise infringe a patent with respect to all other types of invention if the act is done for purposes connected with obtaining regulatory approval in that Party or another country or both.

**Article 15.41**  
**Other Use Without Authorisation of the Right Holder**

The Parties understand that nothing in this Chapter shall limit a Party's rights and obligations under the TRIPS Agreement to authorise use of a patent.

**Article 15.42**  
**Patent Filing**

Each Party shall provide that if an invention is made independently by more than one inventor, and separate applications claiming that invention are filed with, or for, the relevant authority of the Party, that Party shall grant the patent on the application that is patentable and that has the earliest filing date or, if applicable, priority date, unless that application has, prior to publication,<sup>13</sup> been withdrawn, abandoned or refused.

**Article 15.43**  
**Amendments, Corrections and Observations**

1. Each Party shall provide a patent applicant with at least one opportunity to make amendments, corrections and observations in connection with its application.

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<sup>12</sup> For the purpose of Article 15.40(a), a party may treat "regulatory approval" to mean "marketing approval".

<sup>13</sup> For greater certainty, a Party may grant the patent to the subsequent application that is patentable, if an earlier application has been withdrawn, abandoned, or refused, or is not prior art against the subsequent application.

2. Each Party shall not revoke or invalidate a patent, either totally or in part, without the patent owner being given the opportunity to make observations on the intended revocation or invalidation, and to make amendments and corrections where permitted under a Party's law within a reasonable time limit.
3. A Party may provide that amendments made pursuant to paragraph 1 or 2 do not go beyond the scope of the disclosure of the invention, as of the filing date.

**Article 15.44**  
**Publication of Patent Applications**

1. Recognising the benefits of transparency in the patent system, each Party shall publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the earliest priority date.
2. If a pending application is not published promptly in accordance with paragraph 1, a Party shall publish that application or the corresponding patent, as soon as practicable.
3. Each Party shall provide that an applicant may request the early publication of an application prior to the expiration of the period referred to in paragraph 1.

**Article 15.45**  
**Information Relating to Published Patent Applications and Granted Patents**

For published patent applications and granted patents, and in accordance with the Party's requirements for prosecution of such applications and patents, each Party shall make available to the public at least the following information, to the extent that such information is in the possession of the competent authorities and is generated on, or after, the date of the entry into force of this Agreement:

- (a) search and examination results, including details of, or information related to, relevant prior art searches;
- (b) as appropriate, non-confidential communications from applicants; and
- (c) patent and non-patent related literature citations submitted by applicants and relevant third parties.

**Article 15.46**  
**Conditions on Patent Applicants**

Each Party shall require an applicant for a patent to disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

**Article 15.47**  
**Extension of the Duration of Rights Conferred by a Patent**

1. The Parties recognise that pharmaceutical products protected by a patent in their respective territories may be subject to an administrative authorisation procedure before being put on their respective markets. With respect to a pharmaceutical product<sup>14</sup> that is subject to a patent, each Party shall make available either:
  - (a) an adjustment of the patent term; or
  - (b) a period of additional *sui generis* protection conferring the rights conferred by the patent,

to compensate the patent owner for reduction<sup>15</sup> of the effective patent term as a result of the marketing approval process.

2. For greater certainty, in implementing the obligations of this Article, each Party may provide for conditions, limitations, waivers and exceptions provided that the Party continues to give effect to this Article.

**Section F**  
**Undisclosed Test or Other Data**

**Article 15.48**  
**Protection of Undisclosed Test or Other Data for Agricultural Chemical Products**

If a Party requires, as a condition for granting marketing approval for an agricultural chemical product that utilises a new active substance, the submission of undisclosed test or other data, that Party shall not permit third persons, without the consent of the person that previously submitted that information, to place on the market the same or a similar product on the basis of:

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<sup>14</sup> For the purpose of this Article, a Party may treat “pharmaceutical product” as “pharmaceutical substance”, as provided in its relevant law.

<sup>15</sup> For the purposes of this Article, a Party may treat “reduction” as “unreasonable curtailment”.

- (a) that information; or
- (b) the marketing approval granted to the person that submitted that information,

for at least 10 years from the date of marketing approval of the previously approved agricultural chemical product; such date to be determined in accordance with each Party's law.<sup>16 17</sup>

#### **Article 15.49**

#### **Protection of Undisclosed Test or Other Data for Pharmaceutical Products**

1. If a Party requires, as a condition for granting marketing approval for a new pharmaceutical product, the submission of undisclosed test or other data concerning the safety or efficacy or quality of the product, that Party shall not permit third persons, without the consent of the person that previously submitted that information, to place on the market the same or a similar<sup>18</sup> product on the basis of:

- (a) that information; or
- (b) the marketing approval granted to the person that submitted that information,

for at least five years from the date of marketing approval of the previously approved pharmaceutical product, such date to be determined in accordance with each Party's law.

2. For the purposes of this Article, a new pharmaceutical product is one that does not consist of or contain an active substance that has previously been approved for marketing in the Party.<sup>19</sup>

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<sup>16</sup> Nothing in this Article limits a Party from establishing conditions, limitations or exceptions when implementing the obligations set forth in this Article, provided that those conditions, limitations or exceptions are consistent with this Chapter.

<sup>17</sup> Each Party may determine what constitutes an "agricultural chemical product" in accordance with its law.

<sup>18</sup> For greater certainty, for the purposes of this Section, a pharmaceutical product is "similar" to a previously approved pharmaceutical product if the marketing approval, or, in the alternative, the applicant's request for that approval, of that similar pharmaceutical product is based upon the undisclosed test or other data concerning the safety or efficacy or quality of the previously approved pharmaceutical product, or the prior approval of that previously approved product.

<sup>19</sup> Nothing in this Article limits a Party from establishing conditions, limitations or exceptions when implementing the obligations set forth in this Article, provided that those conditions, limitations or exceptions are consistent with this Chapter.

**Section G**  
**Registered Industrial Designs**

**Article 15.50**  
**Protection of Registered Industrial Designs**

1. Each Party shall provide for the protection of independently created registered industrial designs that are new or original. This protection shall confer an exclusive right upon their holders in accordance with this Article.
2. A Party may provide limited exceptions to the protection of registered industrial designs in a manner consistent with Article 25 and paragraph 2 of Article 26 of the TRIPS Agreement.
3. Each Party shall ensure that an owner of a protected registered industrial design has at least the right to prevent third parties not having the owner's consent from making, offering for sale, selling, importing, or using articles bearing or embodying a design which is a copy, or substantially a copy, of the protected registered industrial design when such acts are undertaken for commercial purposes.

**Article 15.51**  
**Duration of Protection**

Each Party shall ensure that the total term of protection available for registered designs is no less than 10 years.

**Article 15.52**  
**Multiple Design Applications**

Each Party shall provide a system for the registration of industrial designs which allows for two or more designs to be registered through the filing of one application.

**Article 15.53**  
**Improving Industrial Design Systems**

The Parties recognise the importance of improving the quality and efficiency of their respective industrial design registration systems.

**Article 15.54**  
**International Classification System for Industrial Designs**

Each Party shall endeavour to use a classification system for industrial designs that is consistent with the Locarno Agreement.

**Article 15.55**  
**International Registration of Industrial Designs**

Each Party shall make all reasonable efforts to accede to the Hague Agreement, if it is not already party to it.

**Section H**  
**Copyright and Related Rights**

**Article 15.56**  
**Authors**

1. Each Party shall provide authors with the exclusive right to authorise or prohibit:
  - (a) the reproduction in any manner or form, in whole or in part, of their works;
  - (b) the distribution to the public, by sale or otherwise, of the original and copies<sup>20</sup> of their works;
  - (c) the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them; and
  - (d) the commercial rental<sup>21</sup> to the public of their works.
2. For the purposes of this Article, “communication to the public” shall be construed in accordance with Article 8 of the WCT.

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<sup>20</sup> For the purposes of this Article, the expressions “copies” and “original and copies” refer exclusively to fixed copies that can be put into circulation as tangible objects.

<sup>21</sup> A Party may satisfy this obligation by complying with Article 7 of the WCT.

**Article 15.57**  
**Performers**

1. Each Party shall provide performers with the exclusive right to authorise or prohibit:
  - (a) the fixation of their unfixed performances;
  - (b) the reproduction by any means and in any form, in whole or in part, of fixations of their performances;
  - (c) the distribution to the public, by sale or otherwise, of the original and copies of their performances fixed in phonograms;
  - (d) the making available to the public of their performances fixed in phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;
  - (e) the broadcasting and the communication to the public of their unfixed performances except where the performance is itself already a broadcast performance; and
  - (f) the commercial rental to the public of the originals and copies of their performances fixed in phonograms even after distribution of them by, or pursuant to authorisation by, the performer.
  
2. For the purposes of this Article, “communication to the public” means the transmission to the public by any medium, other than by broadcasting.<sup>22</sup>

**Article 15.58**  
**Producers of Phonograms**

Each Party shall provide producers of phonograms with the exclusive right to authorise or prohibit:

- (a) the reproduction in any manner or form, in whole or in part, of their phonograms;
- (b) the distribution to the public, by sale or otherwise, of the original or copies of their phonograms;

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<sup>22</sup> For the purpose of this Article, “communication to the public” does not include the making available to the public of fixations of performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

- (c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and
- (d) the commercial rental to the public of the original and copies of their phonograms, even after distribution of them by, or pursuant to authorisation by the producer of the phonogram.

**Article 15.59**  
**Broadcasting Organisations**

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

- (a) the fixation of their broadcasts;
- (b) the reproduction in any manner or form, in whole or in part, of fixations of their broadcasts; and
- (c) the rebroadcasting of their broadcasts.

**Article 15.60**  
**Broadcasting and Communication to the Public of Phonograms Published for Commercial Purposes**

The Parties agree to discuss measures to ensure adequate remuneration for performers and producers of phonograms when phonograms published for commercial purposes are used for broadcasting or for any communication to the public.

**Article 15.61**  
**Artist's Resale Right**

1. Each Party shall provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.
2. Each Party may determine the procedure for collection of the royalty, its amount and the criteria for the works, resales and authors eligible to receive the royalty under its law.
3. The Parties shall enter into consultations to conclude, as soon as reasonably practicable after entry into force of this Agreement, reciprocal arrangements

for authors of a Party to receive royalties from eligible resales of works referred to in paragraph 1 in the territory of the other Party. The Parties shall endeavour to facilitate the participation of relevant stakeholders in such consultations, including collective management organisations responsible for the collection and distribution of the resale royalty, and other relevant art sector stakeholders.<sup>23</sup>

#### **Article 15.62** **Limitations and Exceptions**

1. With respect to works, performances, and phonograms, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.
2. This Article is without prejudice to the limitations and exceptions to any rights permitted by the TRIPS Agreement, the Berne Convention, the Rome Convention, the WCT, or the WPPT.

#### **Article 15.63** **Balance in Copyright and Related Rights Systems**

Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, among other things by means of limitations or exceptions that are consistent with Article 15.62 (Limitations and Exceptions), including those for the digital environment, giving due consideration to legitimate purposes such as, but not limited to: criticism, comment, news reporting, teaching, scholarship, research, and other similar purposes, and facilitating access to published works for people with disability.<sup>24</sup>

#### **Article 15.64** **Term of Protection**

1. Each Party shall provide that the rights of an author of a work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after the author's death.

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<sup>23</sup> The Parties recognise that arrangements between relevant collective management organisations in Australia and the United Kingdom may be necessary to facilitate reciprocal arrangements for authors of a Party to receive royalties from eligible resales of works referred to in paragraph 1 in the territory of the other Party.

<sup>24</sup> For greater certainty, a use that has commercial aspects may in appropriate circumstances be considered to have a legitimate purpose under Article 15.62 (Limitations and Exceptions).

2. In the case of a work of joint authorship, each Party shall provide that the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. Notwithstanding paragraphs 1 and 2, where the term of protection of a work is not determined by reference to the life of a natural person, each Party shall provide that the term of protection shall run for 70 years from the creation of the work or, if lawfully made available to the public within 50 years from creation, 70 years from the first such making available.<sup>25</sup>
4. Each Party shall provide that the rights of broadcasting organisations shall run for 50 years from the first transmission of a broadcast.
5. Each Party shall provide that the rights of performers for their performances in phonograms shall run for 50 years from fixation in phonogram of the performance or, if lawfully made available to the public during this time, 70 years from the first such making available.<sup>26</sup>
6. Each Party shall provide that the rights of producers of phonograms shall run for 50 years from the fixation in phonogram being made or, if lawfully made available to the public during this time, 70 years from the first such making available. Each Party may adopt effective measures to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.
7. Each Party shall provide that the terms laid down in this Article shall be calculated from 1 January of the year following the event.
8. Each Party may provide for longer terms of protection than those provided for in this Article.
9. For greater certainty, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its territory. A Party shall not be required to extend the term of protection for subject matter that already exists on the date of entry into force of this Agreement.

### **Article 15.65**

#### **Collective Management Organisations**

1. The Parties shall endeavour to promote cooperation between the collective management organisations established in their respective territories for the purpose of facilitating licensing of content between the Parties, as well as

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<sup>25</sup> For the purposes of this Article, “making available to the public” shall be determined based on a Party’s law.

<sup>26</sup> The obligations in paragraphs 5 and 6 do not apply to phonograms which came into existence before 1 January 1994.

encouraging the transfer of rights revenue between the respective collective management organisations for the use of such content.

2. The Parties shall endeavour to promote the transparency of collective management organisations established in their respective territories, particularly in relation to the collection of rights revenues, the deductions they make from the rights revenue collected, their distribution policies, and the repertoire they represent.
3. Each Party shall endeavour to promote the non-discriminatory treatment by collective management organisations of rights holders these organisations represent either directly or via another collective management organisation.
4. Each Party shall encourage collective management organisations established in its territory to regularly, diligently and accurately distribute amounts due to represented collective management organisations in a timely manner.

#### **Article 15.66 Technological Protection Measures**

1. Each Party shall provide adequate legal protection and effective legal remedies against the unauthorised circumvention of effective technological measures, where carried out knowingly or with reasonable grounds to know.
2. Each Party shall provide adequate legal protection and effective legal remedies against the manufacture, import, distribution, sale, rental, offer or advertisement for sale or rental, of devices, products or components or the provision of services which:
  - (a) are promoted, advertised or marketed for the purpose of circumvention of any effective technological measures;
  - (b) have only a limited commercially significant purpose or use other than to circumvent any effective technological measures; or
  - (c) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.
3. The obligations in this Article do not apply in respect of effective technological measures applied to computer programs.
4. Each Party may provide for exceptions and limitations to measures implementing paragraphs 1 and 2 in accordance with its law and the relevant international agreements referred to in Article 15.7 (International Agreements) provided that they do not significantly impair the adequacy of

legal protection of those measures and the effectiveness of legal remedies against the acts prescribed in paragraphs 1 and 2.

5. For the purposes of this Article, “effective technological measures” means any technology, device, or component which, in the normal course of its operation, is used by authors, performers, or producers of phonograms in connection with the exercise of their rights under this Section and which restricts acts, in respect of their works, performances, or phonograms, that are not authorised by the authors, performers, or producers of phonograms.

#### **Article 15.67** **Rights Management Information**

1. Each Party shall provide adequate and effective legal remedies against any person knowingly performing, without authority, any of the following acts knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of protected works, performances or phonograms:
  - (a) to remove or alter any electronic rights management information; or
  - (b) to distribute, import for distribution, broadcast, communicate, or make available to the public copies of protected works, performances or phonograms knowing that electronic rights management information has been removed or altered without authority.
2. A Party may adopt or maintain appropriate limitations or exceptions to measures implementing paragraph 1. The obligations set forth in this Article are without prejudice to the limitations and exceptions to infringement of copyright and related rights under a Party’s law.

#### **Article 15.68** **Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement**

Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, *mutatis mutandis*, to works, performances and phonograms, and the rights in and protections afforded to that subject matter as required by this Section.

**Section I**  
**Trade Secrets**

**Article 15.69**  
**Trade Secrets**

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention, each Party shall ensure that trade secret holders have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices.
2. Subject to paragraphs 3 and 4, each Party shall provide that at least each of the following shall be considered contrary to honest commercial practices:
  - (a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;
  - (b) the use or disclosure of a trade secret whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:
    - (i) having acquired the trade secret in a manner referred to in subparagraph (a);
    - (ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or
    - (iii) being in breach of a contractual or any other duty to limit the use of the trade secret;
  - (c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have known<sup>27</sup> that the trade secret had been obtained directly or indirectly from another person who was disclosing the trade secret in a manner referred to in subparagraph (b).
3. Neither Party shall provide that the acquisition, use and disclosure of a trade secret is considered contrary to honest commercial practices:

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<sup>27</sup> For the purpose of this Article, a Party may interpret “ought to have known” as “was grossly negligent in failing to know”.

- (a) if the trade secret is obtained through:
    - (i) independent discovery or creation;
    - (ii) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information; or
    - (iii) the exercise of the right of workers or workers' representatives to information and consultation in accordance with the Party's law; or
  - (b) if the acquisition, use or disclosure is required or permitted by the Party's law.
4. Each Party may provide for limited exceptions and limitations to the rights of trade secret holders in circumstances where the legitimate interests of third parties, the general public or the Party outweigh the legitimate interests of trade secret holders, such as in the following cases:
- (a) for exercising the right to freedom of expression and information, including respect for the freedom and pluralism of the media; and
  - (b) for revealing misconduct, wrongdoing or illegal activity, provided that the person acquiring, using, and disclosing the trade secret did so for the purpose of protecting the general public interest.

## **Section J Enforcement**

### **Sub-Section J.1 General Obligations**

#### **Article 15.70 General Obligations**

1. Each Party shall provide for the procedures set out in this Section in respect of the enforcement of intellectual property rights.
2. Each Party shall ensure that the procedures provided for in this Section shall:
  - (a) be fair and equitable;
  - (b) not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays;

- (c) permit effective action against any act of infringement, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements;
  - (d) be applied in such a manner as to avoid the creation of barriers to legitimate trade, including electronic commerce, and to provide for safeguards against their abuse;
  - (e) be implemented in a manner consistent with the Party's law concerning freedom of expression, fair process, and privacy; and
  - (f) be implemented in a manner that takes into account the need for proportionality between the seriousness of the infringement of the intellectual property right and the applicable remedies and penalties, as well as the interest of third parties.
3. The Parties recognise the importance of ensuring that right holders<sup>28</sup> have access to justice and each Party shall ensure that it has in place a judicial system and alternative dispute resolution mechanisms to allow right holders to enforce their intellectual property rights.
4. This Section does not create any obligation:
- (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of laws and regulations in general, nor does it affect the capacity of each Party to enforce its laws and regulations in general; or
  - (b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of laws and regulations in general.

**Sub-Section J.2**  
**Enforcement – Civil Remedies**

**Article 15.71**  
**Availability of Civil Enforcement**

Each Party shall make available to a right holder civil judicial procedures concerning the enforcement of any intellectual property right covered under this Chapter.

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<sup>28</sup> For greater certainty, references in this Section to a right holder shall include a trade secret holder; and do not limit the persons a Party may permit to enforce intellectual property rights, in accordance with its law.

**Article 15.72**  
**Measures for Preserving Evidence**

1. Each Party shall provide that its judicial authorities have the authority, on application by a person who has presented reasonably available evidence sufficient to support their claim that their intellectual property right has been infringed or is about to be infringed, to order prompt and effective provisional measures to preserve relevant evidence in relation to the alleged infringement, subject to appropriate safeguards and the protection of confidential information.
2. Each Party shall provide that its judicial authorities have the authority to adopt provisional measures, where appropriate, in particular if any delay is likely to cause irreparable harm to the right holder or if there is a demonstrable risk of evidence being destroyed, in the absence of a party.
3. Those provisional measures may include the detailed description or the physical seizure of:
  - (a) suspected infringing goods;
  - (b) materials and implements predominantly used in the production or distribution of these goods; or
  - (c) documentary evidence relevant to the infringement.

**Article 15.73**  
**Provisional and Precautionary Measures**

1. Each Party shall provide that its judicial authorities have the authority to, on request of the applicant:
  - (a) issue against the alleged infringer or, where appropriate and subject to the Party's law, a third party over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right, an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or forbid, on a provisional basis, the continuation of the alleged infringement of that right; and
  - (b) order, where appropriate, the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.
2. In the case of an alleged infringement, each Party shall provide that if the applicant demonstrates circumstances likely to endanger the recovery of

damages, its judicial authorities shall have the authority to order, subject to the Party's law, the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of the alleged infringer's bank accounts and other assets.

**Article 15.74**  
**Right to Information**

1. Each Party shall provide that, during civil proceedings concerning an infringement of an intellectual property right and in response to a justified request of the applicant, the judicial authorities have the authority to order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by:
  - (a) the infringer or an alleged infringer; and
  - (b) any other person involved in the distribution and production of infringing goods or services on a commercial scale.
2. This Article applies without prejudice to other provisions in a Party's law governing privilege, the protection of confidentiality of information sources, or the processing of personal data.

**Article 15.75**  
**Injunctions**

1. Each Party shall provide that where its judicial authorities have found an infringement of an intellectual property right, its judicial authorities have the authority to issue an injunction aimed at prohibiting or stopping the infringement.<sup>29</sup>
2. The injunction referred to in paragraph 1 shall be available against:
  - (a) the infringer; and
  - (b) where appropriate and subject to the Party's law, a third party over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe the intellectual property right.

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<sup>29</sup> The obligations in this section are without prejudice to the flexibilities available under Article 44.2 of the TRIPS Agreement.

**Article 15.76**  
**Corrective Measures**

1. Each Party shall provide that, on request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, its judicial authorities have the authority to order that goods found to be infringing an intellectual property right are definitively removed from the channels of commerce, or destroyed. In regard to counterfeit trade mark goods, the simple removal of the trade mark unlawfully affixed is not sufficient, other than in exceptional circumstances, to permit the release of goods into the channels of commerce. Each Party shall also provide that its judicial authorities have the authority to also order, as appropriate, the destruction of materials and implements predominantly used in the creation or manufacture of those goods.
2. Each Party shall provide that its judicial authorities have the authority to order that the measures referred to in paragraph 1 are to be carried out at the expense of the infringer.

**Article 15.77**  
**Damages**

1. Each Party shall provide that its judicial authorities have the authority to order an infringer who, knowingly or with reasonable grounds to know, engaged in an infringing activity, to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement.
2. Each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the infringer, at least in cases described in paragraph 1, to pay the right holder the infringer's profits that are attributable to the infringement.

**Article 15.78**  
**Costs**

Each Party shall provide that its judicial authorities have the authority to order, in accordance with its law, that court costs or fees and appropriate attorney fees and other expenses incurred by the successful party in legal proceedings concerning the infringement of intellectual property rights shall be borne by the unsuccessful party.<sup>30</sup>

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<sup>30</sup> For greater certainty, nothing in this Article precludes a Party from providing that its judicial authorities have the authority to disallow costs that are unreasonably or unnecessarily incurred or that are disproportionate in amount.

**Article 15.79**  
**Safeguards**

1. Each Party shall provide that its judicial authorities have the authority to require the applicant for a measure provided for in Article 15.72 (Measures for Preserving Evidence) or Article 15.73 (Provisional and Precautionary Measures) in respect of an intellectual property right to provide any reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that the infringement is imminent, and to order the applicant to provide security or equivalent assurance set at a level sufficient to protect the person against whom a measure is sought and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to those procedures.
2. Each Party shall ensure that its judicial authorities have the authority to order a party at whose request measures were taken and that has abused enforcement procedures with regard to intellectual property rights to provide to a person subject to that measure adequate compensation for the injury suffered because of that abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.
3. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of an intellectual property right, its judicial or other authorities have the authority to impose sanctions on a party, counsel, experts or other persons subject to the court's jurisdiction for violation of judicial orders concerning the protection of confidential information produced or exchanged in that proceeding.

**Article 15.80**  
**Administrative Procedures**

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 those procedures conform to principles equivalent in substance to those set out in this Sub-Section.

**Sub-Section J.3**  
**Enforcement – Border Measures**

**Article 15.81**  
**Border Measures**

1. Each Party:
  - (a) shall provide for applications to initiate procedures to suspend the release of, or to detain, suspected goods; and
  - (b) may provide for applications in respect of other goods that are suspected of infringing intellectual property rights.
  
2. For the purposes of this Article:
  - (a) “competent authorities” may include the appropriate judicial, administrative or law enforcement authorities under a Party’s law;
  - (b) “suspected goods” means goods under customs control that are suspected of infringing a trade mark or copyright, including counterfeit trade mark goods and pirated copyright goods;
  - (c) “counterfeit trade mark goods” means any goods, including packaging, bearing without authorisation a trade mark that is identical to the trade mark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trade mark, and that thereby infringes the rights of the owner of the trade mark in question under the law of the Party providing the procedures under this Section; and
  - (d) “pirated copyright goods” means any goods that are copies made without the consent of the right holder or person duly authorised 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 Party providing the procedures under this Section.
  
3. With respect to the initiation of the procedures provided for in paragraph 1 by a right holder, each Party shall provide that the relevant right holder is required:
  - (a) to provide adequate evidence to satisfy the competent authorities that, pursuant to its law, there is *prima facie* an infringement of the right holder’s intellectual property right; and

- (b) to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognisable by its competent authorities.
4. Each Party shall provide that its competent authorities have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trade mark or pirated copyright goods, 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 does not unreasonably deter recourse to these procedures. A Party may provide that the 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 goods in the event the competent authorities determine that the article is not an infringing good.
  5. A Party may provide that its competent authorities have the authority to inform the right holder of the names and addresses of the consignor, exporter, consignee or importer; a description of the goods; the quantity of the goods; and, if known, the country of origin of the goods. This paragraph is without prejudice to a Party's law pertaining to privacy or confidential information, and applies if a Party's competent authorities have detained or suspended the release of suspected goods.
  6. Each Party shall provide that its competent authorities have the authority to initiate border measures *ex officio* for imported goods and goods destined for export, without the need for a formal complaint from a third party or right holder, with respect to suspected goods. Each Party shall provide that its customs authorities use risk analysis to identify suspected goods, which may include random selection.
  7. Each Party shall ensure that its competent authorities decide about granting or recording applications to suspend the release of suspected goods, within a reasonable period of time after the initiation of procedures described in paragraph 1.
  8. Each Party shall adopt or maintain a procedure by which its competent authorities may determine within a reasonable period of time after the initiation of the procedures described in paragraphs 1 and 4, whether the suspected goods infringe an intellectual property right.<sup>31</sup> If a Party provides administrative procedures for the determination of an infringement, it may also provide its authorities with the authority to impose administrative penalties or sanctions, which may include fines or the seizure of the infringing goods following a determination that the goods are infringing.

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<sup>31</sup> A Party may comply with the obligation in this Article with respect to a determination that suspect goods under paragraph 5 infringe an intellectual property right through a determination that the suspect goods bear a false trade description.

9. Each Party shall provide that its competent authorities have the authority to order the destruction or disposal of goods following a determination that the goods are infringing. In cases in which the goods are not destroyed, each Party shall provide that, except in exceptional circumstances, the goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. In regard to counterfeit trade mark goods, the simple removal of the trade mark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.
10. Each Party may provide that, where requested by the customs authorities, the holder of the granted or recorded application shall be obliged to reimburse the costs incurred by the customs authorities, or other parties acting on behalf of customs authorities, from the moment of detention or suspension of the release of the goods, including storage, handling, and any costs relating to the destruction or disposal of the goods.
11. If a Party establishes or assesses, in connection with the procedures described in this Article, an application fee, storage fee or destruction fee, that fee shall not be set at an amount that unreasonably deters recourse to these procedures.
12. Each Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.
13. There shall be no obligation to apply those procedures, as described in this Article, to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

**Sub-Section J.4  
Enforcement – Criminal Remedies**

**Article 15.82  
Criminal Offences**

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trade mark counterfeiting or copyright piracy on a commercial scale.
2. For the purpose of this Article, the term “on a commercial scale” includes at least:
  - (a) acts carried out for commercial advantage or financial gain; and

- (b) significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related right holder in relation to the marketplace.<sup>32</sup>
- 3. Each Party shall treat wilful importation or exportation of counterfeit trade mark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties.<sup>33</sup>
- 4. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation<sup>34</sup> and domestic use, in the course of trade and on a commercial scale, of a label or packaging:<sup>35</sup>
  - (a) to which a trade mark has been applied without authorisation that is identical to, or cannot be distinguished from, a trade mark registered in its territory; and
  - (b) that is intended to be used in the course of trade on goods that are identical to goods for which that trade mark is registered.
- 5. With respect to the offences specified in this Article, each Party shall provide that criminal liability for aiding and abetting is available under its law. Each Party shall also provide that the offences specified in this Article are applicable in any free trade zones in a Party.

### **Article 15.83**

#### **Penalties**

- 1. With respect to the offences specified in Article 15.82 (Criminal Offences), each Party shall provide for penalties that include imprisonment or monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity.

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<sup>32</sup> The Parties agree that a Party may comply with paragraph (b) by addressing those significant acts under its criminal procedures and penalties for non-authorised uses of protected works, performances and phonograms in its law. The Parties also agree that a Party may provide that the volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of the copyright or related right holder in relation to the marketplace.

<sup>33</sup> A Party may comply with its obligation under this paragraph by providing that distribution or sale of counterfeit trade mark goods or pirated copyright goods on a commercial scale is an unlawful activity subject to criminal penalties.

<sup>34</sup> A Party may comply with its obligation relating to importation of labels or packaging through its law concerning distribution.

<sup>35</sup> A Party may comply with its obligations under this paragraph by providing for criminal procedures and penalties to be applied to attempts to commit a trade mark offence.

2. Each Party shall provide that its judicial authorities have the authority to, in determining penalties, account for the seriousness of the circumstances, which may include circumstances that involve threats to, or effects on, health or safety.<sup>36</sup>

**Article 15.84**  
**Seizure, Forfeiture and Destruction**

1. With respect to the offences specified in Article 15.82 (Criminal Offences), each Party shall provide the following:
  - (a) its judicial or other competent authorities shall have the authority to order the seizure of suspected counterfeit trade mark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence and assets derived from, or obtained through the alleged infringing activity. If a Party requires identification of items subject to seizure as a prerequisite for issuing a judicial order referred to in this subparagraph, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure;
  - (b) its judicial authorities shall have the authority in accordance with that Party's law to order the forfeiture at least for serious offences, of assets derived from or obtained through the infringing activity;
  - (c) its judicial authorities shall have the authority in accordance with that Party's law to order the forfeiture or destruction of:
    - (i) all counterfeit trade mark goods or pirated copyright goods;
    - (ii) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trade mark goods; and
    - (iii) any other labels or packaging to which a counterfeit trade mark has been applied and that have been used in the commission of the offence; and
  - (d) its judicial or other competent authorities shall have the authority to release or, in the alternative, provide access to, goods, material, implements, and other evidence held by the relevant authority to a right holder for civil infringement proceedings.

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<sup>36</sup> A Party may also account for those circumstances through a separate criminal offence.

2. With respect to forfeiture or destruction ordered in accordance with paragraph 1(c), each Party shall provide that:
  - (a) in cases in which destruction of counterfeit trade mark goods or pirated copyright goods is not ordered, the judicial or other competent authorities shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder; and
  - (b) in cases in which forfeiture or destruction is ordered, it shall occur without compensation of any kind to the offender.
3. With respect to the offences specified in Article 15.82 (Criminal Offences), a Party may provide that its judicial authorities have the authority to order the seizure or forfeiture of assets, or alternatively, a fine, the value of which corresponds to the assets derived from, or obtained directly or indirectly through, the infringing activity.

**Article 15.85**  
***Ex Officio* Enforcement**

Each Party shall provide that its competent authorities have the authority to act upon their own initiative to initiate legal action with respect to the offences specified in Article 15.82 (Criminal Offences), without the need for a formal complaint by a third party or right holder.

**Article 15.86**  
**Liability of Legal Persons**

Each Party shall provide that legal persons may incur liability for the offences specified in Article 15.82 (Criminal Offences) in accordance with its law.

**Sub-Section J.5**  
**Enforcement in the Digital Environment**

**Article 15.87**  
**General Obligations on Enforcement in the Digital Environment**

1. Each Party shall provide that the enforcement measures, procedures and remedies, referred to in Sub-Sections J.2 (Enforcement – Civil Remedies) and J.4 (Enforcement – Criminal Remedies), as applicable, are available under its law to the same extent to proceed against an act of infringement of intellectual property rights which takes place in the digital environment.

2. The Parties recognise the importance of providing enforcement measures, procedures and remedies that, as applicable, apply to the infringement of copyright and related rights over digital networks, including the use of means of widespread distribution for infringing purposes, and to the infringement of trade marks, including by users of online services.

**Article 15.88**  
**Limitations on Liability of Internet Service Providers**

1. Each Party shall establish or maintain a system that applies in appropriate cases to limit the liability of, or remedies available against, an internet service provider (“ISP”) for at least copyright and related rights infringement by a user of its services. For greater certainty, a Party may extend this system to cover other online service providers and intellectual property rights.
2. Each Party shall ensure that the system established or maintained pursuant to paragraph 1 includes conditions to qualify for the limitation, in accordance with a Party’s law, including, where practicable, requiring the ISP to take action to prevent access to the materials infringing copyright or related rights.
3. This Article shall not affect the possibility of a court or administrative authority, in accordance with the legal system of a Party, requiring the ISP to terminate or prevent an infringement, including by the grant of an injunction pursuant to Article 15.89 (Blocking Orders).

**Article 15.89**  
**Blocking Orders**

1. Each Party shall provide that its civil judicial authorities have the authority to grant an injunction against an ISP within its territory, ordering the ISP to take action to block access to a specific online location, in cases where:
  - (a) that online location is located outside the territory of that Party;<sup>37</sup> and
  - (b) the services of the ISP are used by a third party to infringe copyright or related rights in the territory of that Party.
2. For greater certainty, nothing in this Article precludes a Party from providing that its judicial authorities may grant an injunction to take action to block access to online locations used to infringe intellectual property rights in circumstances other than those specified in paragraph 1.

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<sup>37</sup> A Party may limit the application of this paragraph to online locations that meet a certain threshold of copyright or related rights infringement, or facilitation of that infringement.

**Article 15.90**  
**Procedures for Domain Registrars**

Each Party shall encourage its domain registry to take appropriate, timely, and effective measures to suspend domains used for infringing intellectual property on their respective country-code top-level domains.<sup>38</sup> That encouragement may be satisfied by measures including the facilitation of cooperative arrangements between, the relevant domain registry, law enforcement, and industry groups.

**Article 15.91**  
**Disclosure of Information**

A Party may provide, in accordance with its law, that its competent authorities<sup>39</sup> may order an ISP to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, where that right holder has filed a legally sufficient claim of trade mark or copyright or related rights infringement, and where that information is being sought for the purpose of protecting or enforcing those rights.

**Sub-Section J.6**  
**Enforcement Practices with Respect to Intellectual Property Rights**

**Article 15.92**  
**Transparency of Judicial Decisions and Administrative Rulings**

Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights:

- (a) preferably are in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based; and

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<sup>38</sup> For greater certainty, this Article is without prejudice to the independence of each Party's domain registry.

<sup>39</sup> For the purposes of this Article, "competent authorities" may include the appropriate judicial, administrative, or law enforcement authorities under a Party's law.

- (b) are published<sup>40</sup> or, if publication is not practicable, otherwise made available to the public in a national language in such a manner as to enable interested persons and the other Party to become acquainted with them.

**Article 15.93**  
**Voluntary Stakeholder Initiatives**

Each Party shall endeavour to promote cooperative efforts within the business community to effectively address intellectual property infringement, including in the digital environment, while preserving legitimate competition. This may include encouraging the establishment of public or private advisory groups to address issues of at least trade mark counterfeiting and copyright piracy.

**Article 15.94**  
**Public Awareness**

Each Party shall, as appropriate, use reasonable efforts to enhance public awareness of the importance of respecting intellectual property rights, including in the digital environment, and the detrimental effect of the infringement of intellectual property rights. This may include cooperation with the business community, civil society organisations, and right holder representatives.

**Article 15.95**  
**Specialised Enforcement Expertise, Information and Domestic Coordination**

1. Each Party shall use reasonable efforts to develop specialised expertise within its competent authorities responsible for the enforcement of intellectual property rights, including with respect to infringement taking place in the digital environment.
2. Each Party shall use reasonable efforts to ensure the coordination between, and facilitation of joint actions by, its competent authorities with respect to the enforcement of intellectual property rights, subject to the Party's available resources.

**Article 15.96**  
**Environmental Considerations in Destruction and Disposal of Infringing Goods**

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<sup>40</sup> For greater certainty, a Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.

The Parties recognise the importance of having due regard to environmental matters in their enforcement practices relating to the destruction and disposal of goods that have been found to infringe intellectual property rights.