

## CHAPTER 14 INTELLECTUAL PROPERTY RIGHTS

### Section A: General Provisions

#### ARTICLE 14.1: PRINCIPLES AND OBJECTIVES

1. Each Party shall endeavor to maintain intellectual property regimes that aim to:
  - (a) facilitate international trade and economic, social and cultural development through the dissemination of ideas, technology and creative works; and
  - (b) promote certainty for rights-holders and users of intellectual property in respect of the protection and enforcement of intellectual property rights.
2. The Parties recognize the need to achieve a balance between the rights of intellectual property right-holders and the legitimate interests of intellectual property users.

#### ARTICLE 14.2: INTERNATIONAL AGREEMENTS

1. The Parties reaffirm their rights and obligations under the TRIPS Agreement<sup>1</sup> and any other agreements relating to intellectual property to which they are both parties.
2. Each Party shall make reasonable efforts to accede to the *Hague Agreement Concerning the International Registration of Industrial Designs* by the date of entry into force of this Agreement.

#### ARTICLE 14.3: MORE EXTENSIVE PROTECTION AND ENFORCEMENT

Each Party may provide more extensive protection for, and enforcement of, intellectual property rights under its law than this Chapter requires, provided that the more extensive protection does not contravene this Chapter.

#### ARTICLE 14.4: NATIONAL TREATMENT

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 favorable than that it accords to its

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<sup>1</sup> For greater certainty, it is understood that the Parties recognize the importance of the Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the WTO Ministerial Conference.

own nationals with regard to the protection and enjoyment<sup>2</sup> of intellectual property without derogating from Articles 3 and 5 of the TRIPS Agreement.

#### ARTICLE 14.5: TRANSPARENCY

With the object of making the protection and enforcement of intellectual property rights transparent, each Party shall ensure that laws, regulations and procedures concerning the protection or enforcement of intellectual property rights are in writing and are published,<sup>3</sup> or where publication is not practicable made publicly available.

### **Section B: Trademarks**

#### ARTICLE 14.6: TRADEMARKS PROTECTION

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings shall be capable of constituting a trademark.

2. The Parties shall grant adequate and effective protection to marks including certification marks, collective marks and service marks for goods and services.<sup>4</sup>

3. No Party may require, as a condition of registration, that signs be visually perceptible, nor may either Party deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound.<sup>5</sup>

4. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark 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 Parties making rights available on the basis of use.

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<sup>2</sup> For the purposes of this Chapter, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

<sup>3</sup> For greater certainty, a Party may satisfy the requirement in Article 14.5 to publish a law, regulation, or procedure by making it available to the public on the Internet.

<sup>4</sup> For greater certainty, it is understood that a Party is not obligated to treat certification or collective marks as a separate category in that Party's law, provided that such marks are protected.

<sup>5</sup> For greater certainty, it is understood that the Parties may require a visually perceptible description of a sound mark.

5. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than 10 years.

#### ARTICLE 14.7: EXCEPTIONS

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

#### ARTICLE 14.8: WELL-KNOWN TRADEMARKS

1. No Party may require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.

2. In determining whether a trademark is well known in a Party the competent authority in that Party shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge thereof in the Party concerned which has been obtained as a result of the promotion of the trademark.

3. The protection according to this Article shall not be limited to identical or similar goods or services where the registered trade mark is well known in the respective Party, provided that use of a trademark which is identical or similar to the well-known trademark above in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark, and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

4. Each Party shall provide for appropriate measures to refuse the application or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark, for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well-known trademark.<sup>6</sup>

#### ARTICLE 14.9: REGISTRATION AND APPLICATION OF TRADEMARKS

1. Each Party shall provide a system for the registration of trademarks, which shall include:

- (a) a requirement to provide to the applicant a communication in writing, which may be provided electronically, of the reasons for a refusal to register a trademark;

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<sup>6</sup> For greater certainty, it is understood that in paragraph 4 the term 'well-known trademark' includes unregistered well-known trademarks.

- (b) an opportunity for the applicant to respond to communications from the trademark authorities, to contest an initial refusal, and to appeal judicially a final refusal to register;
- (c) an opportunity for any person to oppose a trademark application before registration and an opportunity for interested parties to seek cancellation or invalidation of a trademark after it has been registered;
- (d) in actions for the cancellation or invalidation of a trademark which was registered in bad faith, each Party shall provide that the action may be commenced at any time and not be subject to time limitations; and
- (e) a requirement that decisions in opposition and cancellation proceedings be reasoned and in writing. Written decisions may be provided electronically.

2. Each Party shall provide a system for the electronic application for, and electronic processing, registering, and maintenance of trademarks.

3. Each Party shall provide, to the extent possible, a publicly available electronic database, including an online database, of trademark applications and registrations.<sup>7</sup>

#### ARTICLE 14.10: PROTECTION OF GEOGRAPHICAL INDICATIONS

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

2. Recognizing the importance of the protection of geographical indications, each Party shall provide adequate and effective protection to geographical indications in accordance with the TRIPS Agreement.

### **Section C: Patents**

#### ARTICLE 14.11: PATENTABLE SUBJECT MATTER

1. 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>8</sup> In addition, each Party may provide that patents shall be available for any new uses or methods of using a known product.

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<sup>7</sup> For greater certainty, it is understood that this section does not require a Party to publish such information in a language other than a national language of that Party.

<sup>8</sup> A Party may treat the terms "inventive step" and "capable of industrial application" as synonymous with the terms "non-obvious" and "useful" respectively.

2. Each Party may exclude from patentability<sup>9</sup>:

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

#### ARTICLE 14.12: EXCEPTIONS

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

#### ARTICLE 14.13: GRACE PERIOD

Each Party may disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure:

- (a) was made or authorized by, or derived from, the patent applicant; and
- (b) occurred within 12 months prior to the date of filing of the application in the territory of the Party.

#### ARTICLE 14.14: AMENDMENTS, CORRECTIONS, AND OBSERVATIONS

Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections and observations<sup>10</sup> in connection with their applications.<sup>11</sup>

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<sup>9</sup> For greater certainty, it is understood that this paragraph does not prevent a Party from legislating exceptions to patentability that are consistent with TRIPS Article 27.

<sup>10</sup> For the purposes of this article, 'observations' means an applicant's written communications with respect to the submitted application.

<sup>11</sup> For greater certainty, it is understood that the scope of circumstances where amendments, corrections and observations are allowed may differ between each country according to its laws.

#### ARTICLE 14.15: ACCELERATED EXAMINATION

1. Each Party shall ensure that an applicant may file a request for an accelerated examination, subject to reasonable grounds and procedural requirements, including but not limited to the claimed invention being practiced after publication of the application by a person other than the applicant, in accordance with each Party's laws and regulations.
2. Recognizing the importance of improving the convenience of the applicants, each Party agrees to cooperate to enhance the accelerated examination system. Such cooperation may include:
  - (a) reducing the pendency of examination; or
  - (b) simplifying the procedural requirements for accelerated examination.

#### ARTICLE 14.16: SIMPLIFICATION OF PROCEDURES

1. A Party may require the translation of an earlier application for a patent whose priority is claimed only where the earlier application is not in a language accepted by the competent authority of the Party.
2. No Party may require the certification of translation of an earlier application for a patent whose priority is claimed.

### **Section D: Plant Variety Protection**

#### ARTICLE 14.17: PLANT VARIETY PROTECTION

The Parties affirm their respective rights and obligations under the *International Convention for the Protection of New Varieties of Plants (1991)*.

### **Section E: Designs**

#### ARTICLE 14.18: DESIGNS PROTECTION

1. The Parties shall ensure in their national laws adequate and effective protection of industrial designs for an article or a part of an article for a period of protection of at least 15 years.
2. The owner of a protected design shall have the right to prevent third parties not having the owner's consent, at least from making, selling or importing articles bearing or embodying the protected design when such acts are undertaken for commercial purpose.

#### ARTICLE 14.19: EXCEPTIONS

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

### **Section F: Unfair Competition and Undisclosed Information**

#### ARTICLE 14.20: UNFAIR COMPETITION

The Parties shall be bound to assure to the nationals of each Party effective protection against unfair competition. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. The following in particular shall be prohibited:

- (a) all acts of such a nature as to create confusion, by any means whatever, with the establishment, the goods, or the industrial or commercial activities of a competitor;
- (b) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities of a competitor; or
- (c) indications or allegations, the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of the goods.

#### ARTICLE 14.21: UNDISCLOSED INFORMATION

The Parties shall protect undisclosed information in accordance with Article 39 of the TRIPS Agreement.

## Section G: Copyright and Related Rights<sup>1213</sup>

### ARTICLE 14.22: PROTECTION GRANTED

Each Party shall comply with:

- (a) Articles 1 through 22 of the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)* (Rome Convention); and
- (b) Articles 1 through 18 of the *Berne Convention for the Protection of Literary and Artistic Works (1971)* (Berne Convention)

including the reservations and exceptions provided for therein.

### ARTICLE 14.23: RIGHT OF REPRODUCTION

Each Party shall provide that authors and producers of phonograms have the right to authorize or prohibit<sup>14</sup> all reproductions of their works and phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form).

### ARTICLE 14.24: RIGHT OF MAKING AVAILABLE TO THE PUBLIC

Each Party shall provide to authors and phonogram producers the right to authorize or prohibit the making available to the public of their works and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

### ARTICLE 14.25: TERM OF PROTECTION

1. Each Party shall provide that, when the term of protection of a work is to be calculated on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death.

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<sup>12</sup> For the purposes of this Chapter, except Article 14.25:

- (a) the terms "authors", "performers" and "producers of phonograms" refer also to any successors in title; and
- (b) the term "authors" also refers to any entity that would be deemed as the first owner of copyright of a work according to the law of the Party, such as an employer.

<sup>13</sup> For the purposes of this Chapter, a "performance" means a performance fixed in a phonogram.

<sup>14</sup> For the purposes of this Chapter, the "right to authorize or prohibit" refers to exclusive rights.



2. Each Party shall provide that the term of protection shall not be less than 70 years from the time when the performance takes place.

#### ARTICLE 14.26: NO FORMALITY

No Party may subject the enjoyment and exercise of the rights of authors and producers of phonograms provided for in this Chapter to any formality.

#### ARTICLE 14.27: CONTRACTUAL TRANSFERS

Each Party shall provide that for rights of authors and phonogram producers, any person acquiring or holding any economic right in a work or in a phonogram may transfer those rights in full or in part by contract.

#### ARTICLE 14.28: LIMITATIONS AND EXCEPTIONS

The Parties may, in their legislation, provide for limitations and exceptions to the rights granted to the right holders referred to in this Section in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holders.

#### ARTICLE 14.29: COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS

Each Party recognizes the importance of the establishment of arrangements between their respective collecting societies for the purposes of mutually ensuring easier access and delivery of content between the Parties, as well as ensuring mutual transfer of royalties for use of the Parties' works, performances, or phonograms. Each Party shall endeavor to achieve a high level of rationalization and to improve transparency with respect to the execution of the task of their respective collecting societies.

#### ARTICLE 14.30: RIGHTS OF PERFORMERS

In accordance with their rights and obligations under the Rome Convention, each Party shall provide that the protection provided for performers shall include the possibility of preventing:

- (a) the broadcasting and the communication to the public, without their consent, of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation; and
- (b) the fixation, without their consent, of their unfixed performance.

## **Section H: Enforcement**

### **Sub-Section A: General Obligations**

#### ARTICLE 14.31: ENFORCEMENT PRACTICES WITH RESPECT TO INTELLECTUAL PROPERTY RIGHTS

In accordance with the laws and regulations of each Party:

- (a) each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights be 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
- (b) each Party shall also provide that those decisions and rulings be published<sup>15</sup> or, where publication is not practicable, otherwise made available to the public, in its national language in such a manner as to enable the public and right holders to become acquainted with them.

#### ARTICLE 14.32: MEASURES AGAINST INFRINGEMENT ON THE INTERNET

Each Party shall take measures to curtail infringement of copyright on the Internet or other digital networks.<sup>16</sup>

### **Sub-Section B: Civil and Administrative Procedures and Remedies**

#### ARTICLE 14.33: ENTITLED RIGHT HOLDERS

Each Party shall make available to right holders<sup>17</sup> the civil judicial procedures concerning the enforcement of any intellectual property right covered in this Chapter.

#### ARTICLE 14.34: DAMAGES

Each Party shall provide that:

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<sup>15</sup> A Party may satisfy the publication requirement by making the decision or ruling available to the public on the Internet.

<sup>16</sup> For greater certainty, it is understood that such measures may include, but are not limited to, legislation, guidelines, policies, awareness campaigns, etc.

<sup>17</sup> For the purposes of this Article, “right holder” includes a person that exclusively has any one or more of the intellectual property rights encompassed in a given intellectual property and also a federation or an association having the legal standing and authority to assert such rights.

- (a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder:
  - (i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; or
  - (ii) at least in the case of copyright or related rights infringement and trademark counterfeiting, the profits of the infringer that are attributable to the infringement, which may be presumed to be the amount of damages referred to in sub-subparagraph (i).
- (b) in determining damages for infringement of intellectual property rights, its judicial authorities may consider, *inter alia*, the value of the infringed good or service, measured by the market price, the suggested retail price, or other legitimate measure of value submitted by the right holder.

#### ARTICLE 14.35: PRE-ESTABLISHED DAMAGES

In civil judicial proceedings, at least with respect to works, phonograms, and performances protected by copyright or related rights and in cases of trademark counterfeiting, each Party may establish or maintain pre-established damages, which shall be available on the election of the right holder.

#### ARTICLE 14.36: LEGAL COSTS

The judicial authorities of each Party shall also have the authority to order an infringer to pay the right holder expenses, which may include appropriate attorney's fees.

#### ARTICLE 14.37: SEIZURE

In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority in accordance with its laws and regulations to order the seizure of allegedly infringing goods, materials, and implements relevant to the act of infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.<sup>18</sup>

#### ARTICLE 14.38: OTHER REMEDIES INCLUDING DESTRUCTION

In order to create an effective deterrent to infringement, the judicial authorities of the Parties shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, destroyed or unless this would be contrary to its laws and

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<sup>18</sup> A Party may fulfill this obligation by provisional measures.

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

#### ARTICLE 14.39: INFORMATION RELATED TO INFRINGEMENT

Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities<sup>19</sup> shall have the authority, when it deems appropriate for the purposes of collecting evidence, to order a party to provide any information relevant to the infringement to the judicial authorities or to the right holders.

#### ARTICLE 14.40: CONFIDENTIALITY ORDER

1. Each Party shall provide that its judicial authorities have the authority to fine or imprison, in appropriate cases, a party to a civil judicial proceeding who fails to abide by valid orders issued by such authorities.

2. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of intellectual property rights, that Party's 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 connection with that proceeding.

#### ARTICLE 14.41: PROHIBITION OF INFRINGING IMPORTS AND EXPORTATION

In civil judicial proceedings concerning the enforcement of intellectual property rights, each Party shall provide that its judicial authorities shall have the authority to order a party to desist from an infringement, in order, *inter alia*, to prevent infringing imports from entering the channels of commerce and to prevent the exportation of infringing goods.

#### ARTICLE 14.42: ALTERNATIVE DISPUTE RESOLUTION

Each Party may permit use of alternative dispute resolution procedures to resolve civil disputes concerning intellectual property rights.

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<sup>19</sup> In accordance with each Party's laws and regulations.

#### ARTICLE 14.43: PROVISIONAL MEASURES

1. Each Party shall provide that its judicial authorities have the authority to order prompt and effective provisional measures:

- (a) to prevent an infringement of any intellectual property right from occurring, and in particular, to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce in a Party's jurisdiction; and
- (b) to preserve relevant evidence in regard to the alleged infringement.

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

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

#### **Sub-Section C: Special Requirements Related to Border Measures**

#### ARTICLE 14.44: SCOPE OF BORDER MEASURES

Each Party shall, in conformity with the provisions of Part III, Section 4 of the TRIPS Agreement, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods<sup>20</sup> may take place, to lodge an application in writing with the competent authorities, administrative or judicial, in the Party in which the border measure procedures are applied, for the suspension by that Party's customs authorities of the release into free circulation of such goods. A Party may enable such an application to be made in respect of goods which involve other infringements

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<sup>20</sup> For the purposes of this Chapter:

- (a) "**counterfeit trademark goods**" means any goods, including packaging bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and
- (b) "**pirated copyright goods**" means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or related right under the law of the Party in which the border measure procedures are applied.

of intellectual property rights, provided that the requirements of this Section are met. A Party may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territory.<sup>21</sup>

#### ARTICLE 14.45: SECURITY OR EQUIVALENT ASSURANCE

Each Party shall provide that its competent authorities have the authority to require a right holder that requests the procedures provided for in this Section 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 this security or equivalent assurance does not unreasonably deter recourse to these procedures.

#### ARTICLE 14.46: DISCLOSURE OF INFORMATION

Where its competent authorities have suspended or seized goods that are suspected of being counterfeit or pirated, in accordance with its laws pertaining to the protection of personal information, a Party shall provide that its competent authorities have the authority to inform the right holder, upon his request, of the names and the addresses of the importer and to provide the right holder with samples of said goods.

#### ARTICLE 14.47: DE MINIMIS IMPORTS

Each Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travelers' personal luggage or sent in small consignments.

#### ARTICLE 14.48: DESTRUCTION

Each Party may provide that goods that have been suspended from release by its customs authorities, and that have been forfeited as pirated or counterfeit, shall be destroyed, except in exceptional circumstances and in regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce.

### **Sub-Section D: Criminal Procedures and Remedies**

#### ARTICLE 14.49: CRIMINAL PROCEDURES AND PENALTIES

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<sup>21</sup> For greater certainty, it is the understanding of the Parties that there shall be no obligation to apply the procedures set forth in this Section to goods put on the market in another country by or with the consent of the right holder in that country.

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

#### ARTICLE 14.50: PENALTIES, SEIZURE, FORFEITURE, AND DESTRUCTION

Further to the Article 14.49, each Party shall provide:

- (a) penalties that include sentences of imprisonment as well as monetary fines sufficient to provide a deterrent to future infringements, consistent with a policy of removing the infringer's monetary incentive;
- (b) that in appropriate cases, remedies available shall also include seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence; and
- (c) that its authorities may initiate legal action *ex officio* with respect to the offences described in this Chapter, without the need for a formal complaint by a private party or right holder.

### **Section I: Other Provisions**

#### ARTICLE 14.51: PROTECTION OF ENCRYPTED PROGRAM-CARRYING SATELLITE AND CABLE TELEVISION BROADCASTS

Each Party shall make it a criminal offense to fraudulently obtain, through willful acts, subscription service of cable or satellite television broadcast.

### **Section J: Cooperation and Exchange of Information**

#### ARTICLE 14.52: COOPERATION AND EXCHANGE OF INFORMATION

1. In addition to any existing forms of cooperation between the Parties in the field of intellectual property, the Parties shall endeavor to cooperate on subject matter covered by this Chapter, including, but not limited to:

- (a) enforcement of rights;

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<sup>22</sup> For greater certainty, it is understood that unauthorized copying of a cinematographic work from a performance thereof in a movie theatre, for purposes of trading therein, is included under this provision. For the purposes of this Article, a Party may treat the term "copying" as synonymous with "reproduction".

- (b) exchange of information related to developments in domestic and international intellectual property policy; and
- (c) exchange of experience in implementation of multilateral intellectual property agreements and with respect to industrial property registration systems.

2. Cooperation activities and exchanges of information undertaken pursuant to this Chapter shall occur on a request basis, be subject to the availability of resources, and be upon terms and conditions to be mutually agreed upon between the Parties.

### **Section K: Committee on Intellectual Property Rights**

#### ARTICLE 14.53: COMMITTEE ON INTELLECTUAL PROPERTY RIGHTS

1. The Parties hereby establish the Committee on Intellectual Property Rights (hereinafter referred to in this Article as the “Committee”).

2. For the purposes of the effective implementation and operation of this Chapter, the functions of the Committee shall include, but are not limited to:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) discussing ways to facilitate cooperation between the Parties;
- (c) exchange of information on laws, systems and other issues of mutual interest concerning intellectual property rights;
- (d) carrying out other functions as may be delegated by the Joint Committee; and
- (e) seeking to resolve disputes that may arise regarding the interpretation or application of this Chapter.

3. The Committee shall meet within one year after the date of entry into force of this Agreement and annually thereafter unless the Parties otherwise agree. The Committee shall inform the Joint Committee of the results of each meeting.<sup>23</sup>

#### ARTICLE 14.54: REVIEW

The Parties agree to review, in order to consider possible amendments to the following issues, starting on the third year of the entry into force of this Agreement:

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<sup>23</sup> The meeting can be held through virtual means.



- (a) protection conferred to unregistered designs;
- (b) confidential design;
- (c) design registration requirements;
- (d) copyright and related rights; and
- (e) enforcement.