

Consolidated Text

Anti-Counterfeiting Trade Agreement

Informal Predecisional/Deliberative Draft:
2 October 2010

This text reflects the outcome of the 11th and final round of the negotiations held in Tokyo. Some delegations expressed reservation on specific parts of text, which are highlighted in the text by underlines and italic letters.

The Parties to this Agreement,

Noting, that effective enforcement of intellectual property rights is critical to sustaining economic growth across all industries and globally;

Further Noting that the proliferation of counterfeit and pirated goods as well as the proliferation of services that distribute infringing material, undermines legitimate trade and the sustainable development of the world economy, causes significant financial losses for right holders and for legitimate businesses, and in some cases, provides a source of revenue for organized crime and otherwise poses risks to the public;

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

Intending to provide effective and appropriate means, complementing the TRIPS Agreement, for the enforcement of intellectual property rights, taking into account differences in their respective legal systems and practices;

Desiring to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Desiring to address the problem of infringement of intellectual property rights, including that which takes place in the digital environment, and with respect to copyright or related rights in particular in a manner that balances the rights and interests of the relevant right holders, service providers and users;

Desiring to promote cooperation between service providers and rights holders with respect to relevant infringements in the digital environment;

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

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

Agree as follows:

CHAPTER ONE INITIAL PROVISIONS AND DEFINITIONS

Section A: Initial Provisions

ARTICLE 1.1: RELATION TO OTHER AGREEMENTS

Nothing in this Agreement shall derogate from any obligation of a Party with respect to any other Party under existing agreements, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

ARTICLE 1.2: NATURE AND SCOPE OF OBLIGATIONS

1. Each Party shall give effect to the provisions of this Agreement. A Party may implement in its domestic law more extensive enforcement of intellectual property rights than is required by this Agreement, provided that such enforcement does not contravene the provisions of this Agreement. Each Party shall be free to determine the appropriate method of implementing the provisions of this Agreement within its own legal system and practice.
2. Nothing in this Agreement creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and enforcement of law in general.
3. The objectives and principles set forth in Part I of the TRIPS Agreement, in particular in Articles 7 and 8 shall apply, *mutatis mutandis*, to this Agreement.

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

1. This Agreement shall be without prejudice to provisions governing the availability, acquisition, scope, and maintenance of intellectual property rights contained in a Party's law.
2. This Agreement does not create any obligation on a Party to apply measures where a right in intellectual property is not protected under the laws and regulations of that Party.

ARTICLE 1.4: PRIVACY AND DISCLOSURE OF INFORMATION

1. Nothing in this Agreement shall require any Party to disclose:
 - (a) information the disclosure of which would be contrary to its law or its international agreements, including laws protecting right of privacy,

- (b) confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or
- (c) confidential information, the disclosure of which would prejudice the legitimate commercial interests of particular enterprises, public or private.

2. When a Party provides written information pursuant to this Agreement, the Party receiving the information shall, subject to its domestic law and practice, refrain from disclosing or using the information for a purpose other than that for which the information was requested or required, except with the prior consent of the Party providing the information.

Section B: General Definitions

ARTICLE 1.X: DEFINITIONS

For the purposes of this Agreement, unless otherwise specified:

ACTA means the Anti-Counterfeiting Trade Agreement;

Committee means the ACTA Committee established under Chapter Five;

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

counterfeit trademark goods means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country in which the procedures set out in Section 2, 3, 4 and 5 of Chapter 2 are invoked;

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

days means calendar days unless otherwise specified;

intellectual property means all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

in-transit goods means goods under “Customs transit” and under “transshipment”;

person means either a natural person or a legal person;

pirated copyright goods means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country in which the procedures set out in Sections 2, 3, 4 and 5 of Chapter 2 are invoked;

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

territory in Section 3 of Chapter 2 means customs territory of a Party and all free zones¹ of that Party;

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

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

WTO means the World Trade Organization; and

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

CHAPTER TWO

LEGAL FRAMEWORK FOR ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Section 1: General Obligations

ARTICLE 2.X: GENERAL OBLIGATIONS WITH RESPECT TO ENFORCEMENT

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

2. Procedures adopted, maintained, or applied to implement this Chapter shall be

¹ For greater certainty, the Parties acknowledge that as used herein, free zone means a part of the territory of a Party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the Customs territory.

fair, equitable, and provide for the rights of all participants subject to procedures to be appropriately protected. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. In implementing this Chapter, each Party shall take into account the need for proportionality between the seriousness of the infringement, the interests of third parties, and the applicable measures, remedies and penalties.

4. No provision of this Chapter shall be construed to require a Party to provide for liability of officials for acts undertaken in the performance of their official duties.

Section 2: Civil Enforcement²

ARTICLE 2.1: AVAILABILITY OF CIVIL PROCEDURES

1. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right as specified in this section.

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

ARTICLE 2.X: INJUNCTIONS

1. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to issue an order against a party to desist from an infringement, and *inter alia*, an order to that party or, where appropriate, to a third party over whom the relevant judicial authority exercises jurisdiction, to prevent infringing goods from entering into the channels of commerce.

2. Notwithstanding the other provisions of this Section, a Party may limit the remedies available against use by government, or by third parties authorized by a government, without the authorization of the right holders to the payment of remuneration provided that the Party complies with the provisions of Part II of the TRIPS Agreement specifically addressing such use. In other cases, the remedies under this Section shall apply or, where these remedies are inconsistent with a Party's law, declaratory judgments and adequate compensation shall be available.

ARTICLE 2.2: DAMAGES

² {US: For the purpose of this Agreement, Parties agree that patents do not fall within the scope of this Section.}

1. Each Party shall provide that in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer who knowingly or with reasonable grounds to know, engaged in infringing activity of intellectual property rights, to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement. In determining the amount of damages for infringement of intellectual property rights, its judicial authorities shall have the authority to consider, *inter alia*, any legitimate measure of value submitted by the right holder, which may include the lost profits, the value of the infringed good or service, measured by the market price, the suggested retail price.

2. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder the profits of the infringer that are attributable to the infringement. A Party's legal system may presume the profits of the infringer to be the amount of damages referred to in paragraph 1.

3. At least with respect to works, phonograms, and performances protected by copyrights or related rights, and in cases of trademark counterfeiting, each Party shall also establish or maintain a system that provides for one or more of the following:

- (a) pre-established damages, or
- (b) presumptions for determining the amount of damages³ sufficient to compensate the right holder for the harm caused by the infringement, or
- (c) at least for copyright, additional damages.

4. Where a Party provides the remedy set out in paragraph 3(a) or 3(b), that Party shall ensure that either its judicial authorities or the right holder has the right to choose such a remedy as an alternative to the remedies referred to in paragraphs 1 and 2.

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

ARTICLE 2.3: OTHER REMEDIES

³ Such measures may include the presumption that the amount of damages is (i) the quantity of the goods infringing the right holder's intellectual property right in question and actually assigned to third persons, multiplied by the amount of profit per unit of goods which would have been sold by the right holder if there had not been the act of infringement, or (ii) a reasonable royalty or (iii) a lump sum on the basis of elements such as at the least the amount of royalties or fees which would have been due if the infringer had requested authorization to use the intellectual property right in question.

1. At least with respect to pirated copyright goods and counterfeit trademark goods, each Party shall provide that in civil judicial proceedings, at the right holder's request, its judicial authorities shall have the authority to order that such goods be destroyed, except in exceptional circumstances, without compensation of any sort.
2. Each Party shall further provide that its judicial authorities shall have the authority to order that materials and implements the predominant use of which has been in the manufacture or creation of such goods be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.
3. The remedies under this article may be carried out at the expense of the infringer.

ARTICLE 2.4: INFORMATION RELATED TO INFRINGEMENT

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

ARTICLE 2.5: PROVISIONAL MEASURES

1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional measures:
 - (a) against a party, or where appropriate, against a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of any intellectual property rights from occurring, and in particular to prevent infringing goods from entering into the channels of commerce;
 - (b) to preserve relevant evidence in regard to the alleged infringement.
2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed. In proceedings conducted *inaudita altera parte* each Party shall

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

3. In civil judicial proceedings concerning at least copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure or other taking into custody of suspected infringing goods, materials, and implements relevant to the act of infringement and, at least for trademark counterfeiting, documentary evidence, either originals or copies thereof, relevant to the infringement.

4. Each Party shall provide that its authorities have the authority to require the applicant, with respect to provisional measures, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty 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. Such security or equivalent assurance shall not unreasonably deter recourse to such procedures.

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

Section 3: Border Measures^{4,5,6}

ARTICLE 2.X: SCOPE OF THE BORDER MEASURES

In providing, as appropriate, and consistent with a Party's domestic system of IPR protection and without prejudice to the requirements of the TRIPS Agreement, for effective border enforcement of intellectual property rights, a Party should do so in a manner that does not discriminate unreasonably between intellectual property rights and that avoids the creation of barriers to legitimate trade.

ARTICLE 2.X: SMALL CONSIGNMENTS AND PERSONAL LUGGAGE

1. Parties shall include in the application of this section goods of a commercial

⁴ Where a Party has dismantled substantially all controls over movement of goods across its border with another Party with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

⁵ It is to be understood 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.

⁶ For the purpose of this Agreement, Parties agree that patents do not fall within the scope of this Section.

nature sent in small consignments.

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

ARTICLE 2.X: PROVISION OF INFORMATION FROM RIGHT HOLDER

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

ARTICLE 2.X: BORDER MEASURES

1. Each Party shall provide procedures for import and export shipments:
 - (a) by which customs authorities may act upon their own initiative, to suspend the release of suspect goods; and
 - (b) where appropriate, by which right holders may request the competent authorities to suspend the release of suspect goods.
2. Each Party may provide procedures for suspect goods in transit or in other situations where the goods are under Customs control:
 - (a) by which customs authorities may act upon their own initiative, to suspend the release of, or to detain, suspect goods; and
 - (b) where appropriate, by which right holders may request the competent authorities to suspend the release of, or to detain, suspect goods.

ARTICLE 2.X: APPLICATION BY RIGHT HOLDER

1. The competent authorities shall require a right holder requesting the procedures described in Article 2.X.1.b and Article 2.X.2.b to provide adequate evidence to satisfy themselves that, under the laws of the Party providing the procedures, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspect goods reasonably recognizable by the competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to the procedures described in Article 2.X.1.b and Article 2.X.2.b.
2. Each Party shall provide for applications to suspend the release of, or to detain,

suspect goods that apply to all goods⁷ under customs control in its territory. Each Party may provide for such applications to apply to multiple shipments. Each Party may provide that, at the request of the right holder, the application to suspend the release of or to detain goods may apply to selected points of entry and exit under customs control.

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

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

ARTICLE 2.9: SECURITY OR EQUIVALENT ASSURANCE

Each Party shall provide that its competent authorities shall have the authority to require a right holder requesting procedures described under Article 2.X.1.b and Article 2.X.2.b to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party may provide that such security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of the goods in the event the competent authorities determine that the goods do not infringe. Only in exceptional circumstances or pursuant to a judicial order may a Party permit a defendant to post a bond or other security to obtain possession of suspect goods.

ARTICLE 2.10: DETERMINATION AS TO INFRINGEMENT

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

ARTICLE 2.11: REMEDIES

1. Each Party shall provide its competent authorities with the authority to order the destruction of goods following a determination under Article 2.10 that the goods are infringing. In cases where such goods are not destroyed, each Party shall ensure such goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder, except in exceptional circumstances.

2. In regard to counterfeit trademark goods, the simple removal of the trademark

⁷ Whether this applies to imports, exports and/or in transit goods depends on Article 2.X.1.b and Article 2.X.2.b.

unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.

3. Each Party may provide its competent authorities with the authority to impose administrative penalties following a determination under Article 2.10 that the goods are infringing.

ARTICLE 2.12: FEES

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

ARTICLE 2.13: DISCLOSURE OF INFORMATION

Without prejudice to a Party's laws pertaining to the privacy or confidentiality of information:

- (a) each Party may authorize its competent authorities to provide right holders with information about specific shipments of goods, including the description and quantity, to assist in the detection of infringing goods;
- (b) each Party may authorize its competent authorities to provide right holders with information about goods including, but not limited to, the description and quantity of the goods and the name and address of the consignor, importer, exporter or consignee, and, if known, the country of origin and name and address of the manufacturer of the goods to assist in the determination under Article 2.10 of whether goods infringe rights covered by this section;
- (c) unless a Party has granted authority under subparagraph (b), at least in the case of imported goods, where competent authorities have seized or, in the alternative, made a determination under Article 2.10 that goods infringe rights covered by this section, each Party shall authorize its competent authorities to provide right holders, within 30 days⁸ of seizure or determination, with information about goods including, but not limited to, the description and quantity of the goods and the name and address of the consignor, importer, exporter or consignee, and, if known, the country of origin and name and address of the manufacturer of the goods.

Section 4: Criminal Enforcement

ARTICLE 2.14: CRIMINAL OFFENSES

⁸ For purposes of the Article, "days" shall mean "business days".

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale.⁹

For the purposes of this section, acts carried out on a commercial scale include at least those carried out as commercial activities for direct or indirect economic or commercial advantage.

2. Each Party shall provide for criminal procedures and penalties to be applied in cases of willful importation¹⁰ and domestic use, in the course of trade and on a commercial scale, of labels or packaging:¹¹

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

3. Each Party may provide criminal procedures and penalties in appropriate cases for the unauthorized copying of cinematographic works from a performance in a motion picture exhibition facility generally open to the public.

4. With respect to the offences specified in this Section, each Party shall ensure that criminal liability for aiding and abetting is available under its law.

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

ARTICLE 2.15: PENALTIES

⁹ Each Party shall treat willful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties under this Article. A Party may comply with its obligation relating to exportation and importation of pirated copyright or counterfeit trademark goods by providing for distribution, sale or offer for sale of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties.

¹⁰ A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

¹¹ A Party may comply with its obligations relating to this article by providing for criminal procedures and penalties to be applied to attempts to commit a trademark offence.

For the offences specified in 2.14.1, 2.14.2, 2.14.3, and 2.14.4, each Party shall provide penalties that include imprisonment as well as monetary fines¹² sufficiently high to provide a deterrent to future acts of infringement, consistently with the level of penalties applied for crimes of a corresponding gravity.

ARTICLE 2.16: SEIZURE, FORFEITURE AND DESTRUCTION

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

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

3. For the offences specified in Article 2.14.1, 2.14.2, 2.14.3, and 2.14.4, each Party shall provide that its competent authorities shall have the authority to order forfeiture or destruction of all counterfeit trademark goods or pirated copyright goods. In cases where counterfeit trademark goods and pirated copyright goods are not destroyed, the competent authorities shall ensure that, except in exceptional circumstances, such goods shall be disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall ensure that forfeiture or destruction of such goods shall occur without compensation of any kind to the infringer.

4. For the offences specified in Article 2.14.1, 2.14.2, 2.14.3, and 2.14.4, each Party shall provide that its competent authorities shall have the authority to order forfeiture or destruction of materials and implements predominantly used in the creation of counterfeit trademark goods or pirated copyright goods and, at least for serious offences, of the assets derived from, or obtained directly or indirectly, through the infringing activity. Each Party shall ensure that forfeiture or destruction of such materials, implements, or assets shall occur without compensation of any kind to the infringer.

5. Each Party may provide that its judicial authorities have the authority to order:

- (a) the seizure of assets the value of which corresponds to that of such assets derived from or obtained directly or indirectly through the allegedly infringing activity; and

¹² It is understood that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

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

ARTICLE 2.17: *EX OFFICIO* CRIMINAL ENFORCEMENT

Each Party shall provide that, in appropriate cases, its competent authorities may act upon their own initiative to initiate investigation or legal action with respect to the criminal offences described in Article 2.14.

Section 5: Enforcement of Intellectual Property Rights in the Digital Environment

ARTICLE 2.18: ENFORCEMENT IN THE DIGITAL ENVIRONMENT

1. Each Party shall ensure that enforcement procedures, to the extent set forth in the civil and criminal enforcement sections of this Agreement, are available under its law so as to permit effective action against an act of intellectual property rights infringement which takes place in the digital environment, including expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringement.

2. Each Party's enforcement procedures shall apply to infringement of at least trademark and copyright or related rights over digital networks, including the unlawful use of means of widespread distribution for infringing purposes. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with each Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy.¹³

3. Each Party shall endeavor to promote cooperative efforts within the business community to effectively address at least trademark and copyright or related rights infringement while preserving legitimate competition and consistent with each Party's law, preserving fundamental principles such as freedom of expression, fair process, and privacy.

4. Each Party may provide, in accordance with its laws and regulations, its competent authorities with the authority to order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, where that right holder has filed a legally sufficient claim of infringement of at least trademark and copyrights or related rights and where such information is being sought for the purpose of protecting or enforcing at least the right holder's trademark and copyright or related rights. These procedures

¹³ For instance, without prejudice to a Party's law, adopting or maintaining a regime providing for limitations on the liability of, or on the remedies available against, online service providers while preserving the legitimate interests of right holders.

shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with each Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy.

5. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures¹⁴ that are used by authors, performers or producers of phonograms in connection with the exercise of their rights in, and that restrict acts in respect of, their works, performances, and phonograms, which are not authorized by the authors, the performers or the producers of phonograms concerned or permitted by law.

6. In order to provide such adequate legal protection and effective legal remedies, each Party shall provide protection at least against:

- (a) to the extent provided by its law:
 - (i) the unauthorized circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know; and
 - (ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and
- (b) the manufacture, importation, or distribution of a device or product, including computer programs, or provision of a service that:
 - (i) is primarily designed or produced for the purpose of circumventing an effective technological measure; or
 - (ii) has only a limited commercially significant purpose other than circumventing an effective technological measure.¹⁵

¹⁴ For the purposes of this Agreement, **technological measure** means any technology, device, or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, performances or phonograms, which are not authorized by authors, performers, or producers of phonograms, as provided for by a Party's law. Without prejudice to the scope of copyright or related rights contained in a Party's law, technological measures shall be deemed **effective** where the use of protected works, performances or phonograms is controlled by authors, performers, or producers of phonograms through the application of a relevant access control or protection process, such as encryption or scrambling, or a copy control mechanism, which achieves the objective of protection.

¹⁵ In implementing paragraphs 5 and 6, no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise contravene any measures implementing these paragraphs.

7. To protect electronic rights management information,¹⁶ each Party shall provide adequate legal protection and effective legal remedies against any person knowingly performing without authority any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related right:

- (a) to remove or alter any electronic right management information
- (b) to distribute, import for distribution, broadcast, communicate, or make available to the public copies of works, performances, or phonograms, knowing that electronic rights management information has been removed or altered without authority.

8. In providing adequate legal protection and effective legal remedies pursuant to paragraphs 5 and 7, each Party may adopt or maintain appropriate limitations or exceptions to measures implementing paragraphs 5, 6 and 7. Further, the obligations in paragraphs 5, 6 and 7 are without prejudice to the rights, limitations, exceptions, or defenses to copyright or related rights infringement under a Party's law.

CHAPTER THREE ENFORCEMENT PRACTICES

ARTICLE 3.1: ENFORCEMENT EXPERTISE, INFORMATION AND DOMESTIC COORDINATION

1. Each Party shall encourage the development of specialized expertise within its competent authorities responsible for enforcement of intellectual property rights.
2. Each Party shall promote collection and analysis of statistical data and other relevant information concerning infringements of intellectual property rights as well as collection of information on best practices to prevent and combat those infringements.
3. Each Party shall, as appropriate, promote internal coordination among, and facilitate joint actions by, its competent authorities responsible for enforcement of intellectual property rights.

¹⁶ For purposes of this Article, electronic rights management information means:

- (a) information that identifies a work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;
- (b) information about the terms and conditions of the use of the work, performance, or phonogram; or
- (c) any numbers or codes that represent the information described in (a) or (b) above, when any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance, or phonogram to the public.

4. Each Party shall endeavor to promote, where appropriate, the establishment and maintenance of formal or informal mechanisms, such as advisory groups, whereby its competent authorities may hear the views of right holders and other relevant stakeholders.

ARTICLE 3.2: MANAGEMENT OF RISK AT BORDER

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

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

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

ARTICLE 3.3: TRANSPARENCY/ PUBLICATION OF ENFORCEMENT PROCEDURES AND PRACTICES

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

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

ARTICLE 3.4: PUBLIC AWARENESS

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

ARTICLE 3.5: ENVIRONMENTAL CONSIDERATIONS IN DESTRUCTION OF INFRINGING GOODS

The destruction of goods infringing intellectual property rights shall be done consistently with each Party's laws and regulations on environmental matters.

CHAPTER FOUR INTERNATIONAL COOPERATION

ARTICLE 4.1: INTERNATIONAL COOPERATION

1. Each Party recognizes that international cooperation is vital to realize effective protection of intellectual property rights and should be encouraged regardless of the origin of the goods infringing intellectual property rights, or the location or nationality of the right holder.
2. In order to combat intellectual property rights infringement, in particular, trademark counterfeiting and copyright piracy, each Party shall promote cooperation, where appropriate, among the competent authorities of the Parties responsible for enforcement of intellectual property rights. Such cooperation may include law enforcement cooperation with respect to criminal enforcement and border measures covered by this Agreement.
3. Each Party understands that cooperation under this Chapter shall be conducted consistent with relevant international agreements as well as subject to the domestic laws, policies, resource allocation and law enforcement priorities of the Parties.

ARTICLE 4.2: INFORMATION SHARING

Without prejudice to Articles 2.4 and 3.2, each Party shall endeavor to exchange with other Parties the following:

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

ARTICLE 4.3: CAPACITY BUILDING AND TECHNICAL ASSISTANCE

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

- (a) enhancement of public awareness on intellectual property rights;
- (b) development and implementation of national legislation related to enforcement of intellectual property rights;
- (c) training of officials on enforcement of intellectual property rights; and
- (d) coordinated operations conducted at the regional and multilateral levels.

2. For the purposes of paragraph 1, each Party shall endeavor to work closely with other Parties and, where appropriate, countries or separate customs territories not a Party to this Agreement.

3. Each Party may undertake the activities described in this Article in conjunction with relevant private sector or international organizations. Each Party shall strive to avoid unnecessary duplication of the activities described in this Article with respect to other international efforts.

CHAPTER FIVE INSTITUTIONAL ARRANGEMENTS

ARTICLE 5.1: THE ACTA COMMITTEE

1. The Parties hereby establish the ACTA Committee, and each Party shall be represented on that Committee.

2. The Committee shall:

- (a) review the implementation and operation of this Agreement;
- (b) consider matters concerning the development of this Agreement
- (c) consider in accordance with Article 6.4 any proposed amendments to this Agreement;
- (d) approve in accordance with Article 6.5.2 the terms of accession to this Agreement of any Member of the WTO seeking to become Party to this Agreement; and

- (e) consider any other matter that may affect the implementation and operation of this Agreement.
- 3. The Committee may decide to:
 - (a) establish *ad hoc* committees or working groups to assist the Committee in carrying out its responsibilities under paragraph 2, as well as, upon request, to assist prospective parties in joining this Agreement;
 - (b) seek the advice of non-governmental persons or groups;
 - (c) make recommendations regarding implementation and operation of the Agreement, including endorsing best practice guidelines related thereto;
 - (d) share with third parties information and best practices on reducing intellectual property rights infringements, including techniques for identifying and monitoring piracy and counterfeiting; and
 - (e) take such other action in the exercise of its functions as the Committee may decide.
- 1.
 - (a) The Committee shall adopt its rules and procedures within a reasonable period of time after entry into force of the Agreement, and shall invite those signatories that are not yet Parties to participate in the Committee's deliberations on rules and procedures.
 - (i) Such rules and procedures shall include provisions with respect to chairing and hosting meetings, performance of organizational duties relevant to the Agreement and its operation,
 - (ii) Such rules and procedures may include provisions with respect to granting observer status, and any other matter the Committee decides necessary for its proper operation.
 - (b) The Committee may amend the rules and procedures.
 - (c) Notwithstanding paragraph 5, during the first five years following entry into force of the Agreement, the Committee may adopt or amend its rules or procedures upon the consensus of the signatories, including those signatories that are not yet Parties to the Agreement.
 - (d) After the period specified in subparagraph (c), the Committee may adopt or amend rules or procedures upon the consensus of the Parties to the Agreement.

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

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

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

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

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

ARTICLE 5.2: CONTACT POINTS

1. Each Party shall designate a contact point to facilitate communications among the Parties on any matter covered by this Agreement.

2. On the request of a Party, the contact point of another Party shall identify an appropriate office or official and assist, as necessary, in facilitating communication between the office or official concerned and the requesting Party.

ARTICLE 5.3: CONSULTATION

1. Each Party may request in writing consultations with another Party with respect to any matter affecting the implementation of this Agreement. The requested Party shall accord sympathetic consideration to such a request, provide a response, and afford adequate opportunity for such consultations.

2. Any such consultations, including particular positions taken by Parties therein, shall be confidential, and without prejudice to the rights of either Party in any other proceeding, including ones under the auspices of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

3. The Parties may by mutual agreement notify the result of consultations referred to in this Article to the Committee.

CHAPTER SIX

FINAL PROVISIONS

ARTICLE 6.1: SIGNATURE

This Agreement shall remain open for signature by participants in its negotiation¹⁷ from [date] until [date] at the Depositary. Note: the dates will reflect a 2 year period.

ARTICLE 6.2: ENTRY INTO FORCE OF THE AGREEMENT

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

ARTICLE 6.3: WITHDRAWAL

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

ARTICLE 6.4: AMENDMENTS

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

ARTICLE 6.5: BECOMING PARTY TO THE AGREEMENT

¹⁷ Which shall comprise Australia, Austria, Belgium, Bulgaria, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, the Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, Morocco, the Netherlands, New Zealand, Poland, Portugal, Romania, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, the United Mexican States, the United States, and the European Union.

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

ARTICLE 6.6: TEXTS OF THE AGREEMENT

This Agreement shall be signed in the English, French and Spanish languages, which shall be equally authentic.

ARTICLE 6.7: DEPOSITARY

Japan shall be the Depository of this Agreement.