

**A Comparative Guide to the Chile-United States Free Trade Agreement and the Dominican Republic-Central America-United States Free Trade Agreement**  
A STUDY BY THE TRIPARTITE COMMITTEE

**Chapter Seventeen: Intellectual Property Rights**

[Comparative Study](#)

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**CHILE–U.S.**  
**Date of Signature: June 6, 2003**  
**Chapter Seventeen:**  
**Intellectual Property Rights**

**DR-CAFTA**  
**Date of Signature: August 5, 2004**  
**Chapter Fifteen:**  
**Intellectual Property Rights**

*When necessary, article numbers have been added in italics to paragraphs as a guide to the reader.*

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*The Parties,*  
*Desiring to reduce distortions and impediments to trade between the Parties;*  
*Desiring to enhance the intellectual property systems of the two Parties to account for the latest technological developments and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;*

*NO CORRESPONDING PROVISION*

*Desiring to promote greater efficiency and transparency in the administration of intellectual property systems of the Parties;*

*Desiring to build on the foundations established in existing international agreements in the field of intellectual property, including the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and affirming the rights and obligations set forth in the TRIPS Agreement;*

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

*Emphasizing that the protection and enforcement of intellectual property rights is a fundamental principle of this Chapter that helps promote*

technological innovation as well as the transfer and dissemination of technology to the mutual advantage of technology producers and users, and that encourages the development of social and economic well-being;

*Convinced* of the importance of efforts to encourage private and public investment for research, development, and innovation;

*Recognizing* that the business community of each Party should be encouraged to participate in programs and initiatives for research, development, innovation, and the transfer of technology implemented by the other Party;

*Recognizing* the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected works;

Agree as follows:

#### *Article 17.1: General Provisions*

17.7.1. Each Party shall give effect to the provisions of this Chapter and may, but shall not be obliged to, implement in its domestic law more extensive protection than is required by this Chapter, provided that such protection does not contravene **the provisions of** this Chapter.

#### *NO CORRESPONDING PARAGRAPH*

#### *Article 15.1: General Provisions*

15.1.1. Each Party shall, **at a minimum**, give effect to this Chapter. A Party may, but shall not be obliged to, implement in its domestic law more extensive protection **and enforcement of intellectual property rights** than is required under this Chapter, provided that such protection **and enforcement** does not contravene this Chapter.

15.1.2. Each Party shall ratify or accede to the following agreements by the date of entry into force of this Agreement:

(a) the **WIPO Copyright Treaty (1996)**; and

(b) the **WIPO Performances and Phonograms Treaty (1996)**.

17.1.2. Before January 1, 2007, each Party shall ratify or accede to the *Patent Cooperation Treaty (1984)*.

15.1.3. Each Party shall ratify or accede to the following agreements by January 1, 2006:

(a) the *Patent Cooperation Treaty*, as revised and amended (1970); and

(b) the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1980)*.

17.1.3. Before January 1, 2009, each Party shall ratify or accede to:

(a) the *International Convention for the Protection of New Varieties of Plants (1991)*;

15.1.5. (a) Each Party shall ratify or accede to the *International Convention for the Protection of New Varieties of Plants (1991)* (UPOV Convention 1991).<sup>1</sup> Nicaragua shall do so by January 1, 2010. Costa Rica shall do so by June 1, 2007.

All other Parties shall do so by January 1, 2006.

NO CORRESPONDING FOOTNOTE

<sup>1</sup>The Parties recognize that the UPOV Convention 1991 contains exceptions to the breeder's right, including for acts done privately and for non-commercial purposes, such as private and non-commercial acts of farmers. Further, the Parties recognize that the UPOV Convention 1991 provides for restrictions to the exercise of a breeder's right for reasons of public interest, provided that the Parties take all measures necessary to ensure that the breeder receives equitable remuneration. The Parties also understand that each Party may avail itself of these exceptions and restrictions. Finally, the Parties understand that there is no conflict between the UPOV Convention 1991 and a Party's ability to protect and conserve its genetic resources.

NO CORRESPONDING PARAGRAPH

15.1.5. (b) Subparagraph (a) shall not apply to any Party that provides effective patent protection for plants by the date of entry into force of this Agreement. Such Parties shall make all reasonable efforts to ratify or to accede to UPOV Convention 1991.

<p>(b) the <i>Trademark Law Treaty</i> (1994); and</p>	<p>15.1.4. Each Party shall ratify or accede to the following agreements <b>by January 1, 2008:</b></p> <p>(b) the <i>Trademark Law Treaty</i> (1994).</p>
<p>(c) the <i>Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite</i> (1974).</p>	<p>(a) the <i>Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite</i> (1974); and</p>
<p>17.1.4. Each Party shall <b>undertake</b> reasonable efforts to ratify or accede to the following agreements <b>in a manner consistent with its domestic law:</b></p>	<p>15.1.6. Each Party shall <b>make all</b> reasonable efforts to ratify or accede to the following agreements:</p>
<p>(a) the <i>Patent Law Treaty</i> (2000);</p>	<p>(a) the <i>Patent Law Treaty</i> (2000);</p>
<p>(b) the <i>Hague Agreement Concerning the International Registration of Industrial Designs</i> (1999); and</p>	<p>(b) the <i>Hague Agreement Concerning the International Registration of Industrial Designs</i> (1999); and</p>
<p>(c) the <i>Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks</i> (1989).</p>	<p>(c) the <i>Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks</i> (1989).</p>
<p>17.1.5. <b>Nothing in this Chapter concerning intellectual property rights shall derogate from the obligations and rights of one Party with respect to the other by virtue of the TRIPS Agreement or multilateral intellectual property agreements concluded or administered under the auspices of the World Intellectual Property Organization (WIPO).</b></p>	<p>15.1.7. <b>Further to Article 1.3 (Relation to Other Agreements), the Parties affirm their existing rights and obligations under the TRIPS Agreement and intellectual property agreements concluded or administered under the auspices of the World Intellectual Property Organization (WIPO) and to which they are party.</b></p>

17.1.6. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to **persons** of the other Party treatment no less favorable than it accords to its own **persons** with regard to the protection<sup>1</sup> and enjoyment of such intellectual property rights and any benefits derived from such rights. **With respect to secondary uses of phonograms by means of analog communications and free over-the-air radio broadcasting, however, a Party may limit the rights of the performers and producers of the other Party to the rights its persons are accorded within the jurisdiction of the other Party.**

15.1.8. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to **nationals**<sup>2</sup> of the other Parties treatment no less favorable than it accords to its own **nationals** with regard to the protection<sup>3</sup> and enjoyment of such intellectual property rights and any benefits derived from such rights.

**NO CORRESPONDING FOOTNOTE**

**2.** For purposes of Articles 15.1.8, 15.1.9, 15.4.2, and 15.7.1, a national of a Party shall also mean, in respect of the relevant right, an entity located in that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 15.1.2 through 15.1.6 and the TRIPS Agreement.

<sup>1</sup> For purposes of **paragraphs 6 and 7**, “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. For purposes of **paragraphs 6 and 7**, “protection” shall also include the prohibition on circumvention of effective technological measures **pursuant to** Article 17.7(5) and the **provisions** concerning rights management information **pursuant to** Article 17.7(6).

<sup>3</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. Further, for purposes of **this paragraph**, “protection” shall also include the prohibition on circumvention of effective technological measures **set out in** Article 15.5.7 and the **rights and obligations** concerning rights management information **set out in** Article 15.5.8.

17.1.7. Each Party may derogate from paragraph 6 in relation to its judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of that Party, only where such derogations are necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Chapter and where such practices are not applied in a manner that would constitute a disguised restriction on trade.

15.1.9. A Party may derogate from paragraph 8 in relation to its judicial and administrative procedures, including any procedure requiring a national of another Party to designate for service of process an address in its territory or to appoint an agent in its territory, provided that such derogation:

- (a) is necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and
- (b) is not applied in a manner that would constitute a disguised restriction on trade.

17.1.8. Paragraphs 6 and 7 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

17.1.9. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

17.1.10. Except as otherwise provided for 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 which is protected by a Party on that date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Chapter. In respect of paragraphs 10 and 11, copyright and related rights obligations with respect to existing works and phonograms shall be determined solely under Article 17.7(7).

17.1.11. Neither Party shall be obligated to restore protection to subject matter which on the date of entry into force of this Chapter has fallen into the public domain in that Party.

17.1.12. Each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights, and all final judicial decisions and administrative rulings of general applicability pertaining to the enforcement of such rights, shall be in writing and shall be published,<sup>2</sup> or where such publication is not practicable, made publicly available, in a national language in such a manner as to enable the other Party and right holders to become acquainted with them, with the object of making the protection and enforcement of intellectual property rights transparent. Nothing in this paragraph shall require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

15.1.10. Paragraph 8 does not apply to procedures provided in multilateral agreements to which the Parties are party concluded under the auspices of the WIPO in relation to the acquisition or maintenance of intellectual property rights.

15.1.13. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

15.1.11. Except as it provides otherwise, this Chapter gives rise to obligations in respect of all subject matter existing on the date of entry into force of this Agreement that is protected on that date in the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

15.1.12. Except as 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 the Party where the protection is claimed.

15.1.14. Each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights shall be in writing and shall be published,<sup>4</sup> or where such publication is not practicable, made publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them, with the object of making the protection and enforcement of intellectual property rights transparent. Nothing in this paragraph shall require a Party to disclose confidential information that would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

<sup>2</sup> The requirement for publication is satisfied by making **the written document** available to the public via the Internet.

17.1.13. Nothing in this Chapter prevents a Party from adopting measures necessary to prevent anticompetitive practices that may result from the abuse of the intellectual property rights set forth in this Chapter.

17.1.14. **For the purposes of strengthening the development and protection of intellectual property, and implementing the obligations of this Chapter,** the Parties will cooperate, on mutually agreed terms and subject to the availability of appropriated funds, by means of:

(a) educational and dissemination projects on the use of intellectual property as a research and innovation tool, as well as on the enforcement of intellectual property;

(b) appropriate coordination, training, specialization courses, and exchange of information between the intellectual property offices and other institutions of the Parties; and

(c) enhancing the knowledge, development, and implementation of the electronic systems used for the management of intellectual property.

[Article 17.2: Trademarks](#)

<sup>4</sup> A Party may satisfy the requirement for publication by making **the measure** available to the public on the Internet.

15.1.15. Nothing in this Chapter shall be **construed to prevent** a Party from adopting measures necessary to prevent anticompetitive practices that may result from the abuse of the intellectual property rights set out in this Chapter, **provided that such measures are consistent with the provisions of this Chapter.**

15.1.16. **Recognizing the Parties' commitment to trade capacity building as reflected in the establishment of the Committee on Trade Capacity Building under Article 19.4 (Committee on Trade Capacity Building) and the importance of trade capacity building activities,** the Parties shall cooperate **through that Committee in the following initial capacity-building priorities activities,** on mutually agreed terms **and conditions,** and subject to the availability of appropriated funds:

(a) educational and dissemination projects on the use of intellectual property as a research and innovation tool, as well as on the enforcement of intellectual property **rights;**

(b) appropriate coordination, training, specialization courses and exchange of information between the intellectual property offices and other institutions of the Parties; and

(c) enhancing the knowledge, development, and implementation of the electronic systems used for the management of intellectual property.

[Article 15.2: Trademarks](#)

17.2.1. Each Party shall provide that trademarks shall include collective, certification, and sound marks, and may include geographical indications<sup>3</sup> and scent marks. **Neither Party is obligated to treat certification marks as a separate category in its domestic law, provided that the signs as such are protected.**

<sup>3</sup> A geographical indication is capable of constituting a trademark to the extent that the geographical indication consists of any sign, or any combination of signs, capable of identifying a good or service 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 or service is essentially attributable to its geographical origin.

*NO CORRESPONDING FOOTNOTE*

15.2.1. Each Party shall provide that trademarks shall include collective, certification and sound marks, and may include geographical indications and scent marks. A geographical indication is capable of constituting a mark to the extent that the geographical indication consists of any sign, or any combination of signs, capable of identifying a good or service as originating<sup>5</sup> 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 or service is essentially attributable to its geographical origin.

<sup>5</sup> **For purposes of this Chapter, “originating” does not have the meaning ascribed to that term in Article 2.1(Definitions of General Application).**

Note: **Guatemala** and **Honduras** may delay giving effect to Article 15.2.1 for no longer than **two years**, beginning on the date of entry into force of DR-CAFTA. The **Dominican Republic** may delay giving effect to Article 15.2.1 for no longer than **eighteen months**, beginning on the date of entry into force of DR-CAFTA. (DR-CAFTA Art. 15.12.2).

17.2.2. Each Party shall **afford** an opportunity for interested parties to oppose the application for a trademark.

Note: Pursuant to Article 17.12.2(a) Final Provisions, amendments to the domestic legislation of a Party or financial resources required for the full implementation of the obligation contained in Article 17.2 on trademarks, shall be in force or available as soon as practicable and in no event later than two years from the date of entry into force of the Agreement.

15.2.6. Each Party shall **provide a system for the registration of trademarks, which shall include:** (...) (c) an opportunity for interested parties to petition to oppose a trademark application **or to seek cancellation of a trademark after it has been registered;**



17.2.3. Pursuant to Article 20 of the TRIPS Agreement, each Party shall ensure that any measures mandating the use of the term customary in common language as the common name for a good (“common name”) including, *inter alia*, requirements concerning the relative size, placement, or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such good.

17.2.4. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent third parties not having the owner’s consent from using in the course of trade identical or similar signs, including subsequent geographical indications, for goods or services that are related to those goods or services in respect of which the trademark is registered, where such use would result in a likelihood of confusion.<sup>4</sup>

<sup>4</sup> It is understood that likelihood of confusion is to be determined under the domestic trademark law of each Party.

17.2.5. 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.

17.2.6. Article 6bis of the *Paris Convention for the Protection of Industrial Property* (1967) (Paris Convention) shall apply, *mutatis mutandis*, to goods or services which are not similar to those identified by a well-known trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark and provided that the interests of the owner of the trademark are likely to be damaged by such use.

15.2.2. In view of the obligations of Article 20 of the TRIPS Agreement, each Party shall ensure that measures mandating the use of the term customary in common language as the common name for a good or service (“common name”) including, *inter alia*, requirements concerning the relative size, placement or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such goods.

15.2.3. 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, including geographical indications, for goods or services that are related 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 case of the use of an identical sign, including a geographical indication, for identical goods or services, a likelihood of confusion shall be presumed.

NO CORRESPONDING FOOTNOTE

15.2.4. 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 interest of the owner of the trademark and of third parties.

15.2.5. Article 6bis of the *Paris Convention for the Protection of Industrial Property* (1967) (Paris Convention) shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark<sup>6</sup> whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

17.2.7. Each Party shall, according to its domestic law, provide for appropriate measures to prohibit or cancel the registration of a trademark identical or similar to a well-known trademark, if the use of that trademark by the registration applicant is likely to cause confusion, or to cause mistake, or to deceive or risk associating the trademark with the owner of the well-known trademark, or constitutes unfair exploitation of the reputation of the trademark. Such measures to prohibit or cancel registration shall not apply when the registration applicant is the owner of the well-known trademark.

NO CORRESPONDING PARAGRAPH

17.2.8. In determining whether a trademark is well-known, a Party shall not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

<sup>6</sup> In determining that whether a trademark is well known, the reputation of the trademark need not extend beyond the sector of the public that normally deals with the relevant goods or services.

17.2.9. Each Party recognizes the importance of the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* (1999), adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO and shall be guided by the principles contained in this Recommendation.

NO CORRESPONDING PARAGRAPH

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

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

(a) providing to the applicant a communication in writing, which may be electronic, of the reasons for any refusal to register a trademark;

(a) providing to the applicant a communication in writing, which may be electronic, of the reasons for any refusal to register a trademark;

(b) providing to the applicant an opportunity to respond to communications from the trademark authorities, contest an initial refusal, and appeal judicially any final refusal to register; and

(b) an opportunity for the applicant to respond to communications from the trademark authorities, to contest an initial refusal, and to appeal judicially any final refusal to register;

(c) a requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.

(...)and

(d) a requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.

17.2.11. Each Party shall **work to** provide, to the maximum degree practical, a system for the electronic application, processing, registration, and maintenance of trademarks.

15.2.7. Each Party shall provide, to the maximum degree practical, a system for the electronic application, processing, registration, and maintenance of trademarks, **and work to provide, to the maximum degree practical, a publicly available electronic database –including an on-line database – of trademark applications and registrations.**

17.2.12. **In relation to trademarks, Parties are encouraged to classify goods and services according to the classification of the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* (1979). In addition, each Party shall provide that:**

*NO CORRESPONDING PARAGRAPH*

(a) each registration or publication which concerns a trademark application or registration and which indicates the relevant goods or services shall indicate the goods or services by their names; and

15.2.8. (a) Each Party shall provide that each registration or publication that concerns a trademark application or registration and that indicates goods or services shall indicate the goods or services by their **common names, grouped according to the classes of the classification established by the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* (1979), as revised and amended (Nice Classification).**

(b) goods or services may not be considered as being similar to each other simply on the ground that, in any registration or publication, they appear in the same class of any classification system, including the Nice Classification. Conversely, goods or services may not be considered as being dissimilar from each other simply on the ground that, in any registration or publication, they appear in different classes of any classification system, including the Nice Classification.

(b) Each Party shall provide that goods or services may not be considered as being similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification.

*NO CORRESPONDING PARAGRAPH*

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

*NO CORRESPONDING PARAGRAPH*

15.2.10. No Party may require recordal of trademark licenses to establish the validity of the license, to assert any rights in a trademark, or for other purposes.<sup>7</sup>

*NO CORRESPONDING FOOTNOTE*

<sup>7</sup> A Party may establish a means to allow licensees to record licenses for the purpose of providing notice to the public as to the existence of the license. However, no Party may make notice to the public a requirement for asserting any rights under the license.

*Article 17.3: Domain Names on the Internet*

*Article 15.4: Domain Names on the Internet*

17.3.1. Each Party shall require that the management of its country-code top level domain (ccTLD) provide an appropriate procedure for the settlement of disputes, based on the principles established in the *Uniform Domain-Name Dispute-Resolution Policy* (UDRP), in order to address the problem of trademark cyber-piracy.

15.4.1. In order to address trademark cyber-piracy, each Party shall require that the management of its country-code top-level domain (ccTLD) provides an appropriate procedure for the settlement of disputes, based on the principles established in the *Uniform Domain-Name Dispute-Resolution Policy* (UDRP), in order to address the problem of trademark cyber-piracy.

Note: **Guatemala, Honduras and Nicaragua** may delay giving effect to Article 15.4 and **Costa Rica** to Article 15.4.1 for no longer than **two years**, beginning on the date of entry into force of DR-CAFTA (DR-CAFTA Art. 15.12.2).

17.3.2. Each Party shall, in addition, require that the management of its respective ccTLD provide online public access to a reliable and accurate database of contact information for domain-name registrants, in accordance with each Party's law regarding protection of personal data.

15.4.2. Each Party shall require that the management of its ccTLD provides online public access to a reliable and accurate database of contact information for domain-name registrants. In determining the appropriate contact information, the management of a Party's cc TLD may give due regard to the Party's laws protecting the privacy of its nationals.

*Article 17.4: Geographical Indications<sup>5</sup>*

*Article 15.3: Geographical Indications*

<sup>5</sup> For the purposes of this Article, persons of a Party shall also mean government agencies.

17.4.1. Geographical indications, for the purposes of this Article, 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. Any sign or combination of signs (such as words, including geographical and personal names, letters, numerals, figurative elements, and colors), in any form whatsoever, shall be eligible for protection or recognition as a geographical indication.

*Definition*

15.3.1. For purposes of this Article, geographical indications are indications that 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. Any sign or combination of signs, in any form whatsoever, shall be eligible to be a geographical indication.

17.4.2. Chile shall:

(a) provide the legal means to identify and protect geographical indications of United States persons that meet the criteria in paragraph 1; and

(b) provide to United States geographical indications of wines and spirits the same recognition as Chile accords to wines and spirits under the Chilean geographical indications registration system.

7.4.3. The United States shall:

(a) provide the legal means to identify and protect the geographical indications of Chile that meet the

15.3.2. Each Party shall provide the legal means to identify<sup>8</sup> and protect geographical indications of the other Parties that meet the criteria of paragraph 1. (...)

criteria in paragraph 1; and

(b) provide to Chilean geographical indications of wines and spirits the same recognition as the United States accords to wines and spirits under the Certificate of Label Approval (COLA) system as administered by the Alcohol and Tobacco Tax and Trade Bureau, Department of Treasury (TTB), or any successor agencies. Names that Chile desires to be included in the regulation set forth in 27 CFR Part 12 (Foreign Nongeneric), or any successor to that regulation, will be governed by paragraph 4 of this Article.

17.4.4. Each Party shall provide the means for persons of the other Party to apply for protection or petition for recognition of geographical indications. Each Party shall accept applications or petitions, as the case may be, without the requirement for intercession by a Party on behalf of its persons.

*NO CORRESPONDING FOOTNOTE*

17.4.5. Each Party shall process applications or petitions, as the case may be, for geographical indications with a minimum of formalities.

17.4.6. Each Party shall make the regulations governing filing of such applications or petitions, as the case may be, available to the public in both printed and electronic form.

*Procedures with Respect to Geographical Indications*

15.3.2. Each Party shall provide the legal means to identify<sup>8</sup> and protect geographical indications of the other Parties that meet the criteria of paragraph 1. Each Party shall provide the means for persons of another Party to apply for protection or petition for recognition of geographical indications. Each Party shall accept applications and petitions from persons of another Party without the requirement for intercession by that Party on behalf of its persons.

<sup>8</sup> For the purposes of this paragraph, legal means to identify means a system that permits applicants to provide information on the quality, reputation or other characteristics of the asserted geographical indication.

15.3.3. Each Party shall process applications or petitions, as the case may be, for geographical indications with a minimum of formalities.

15.3.4. Each Party shall make its regulations governing filing of such applications or petitions, as the case may be, readily available to the public.

17.4.7. Each Party shall ensure that applications or petitions, as the case may be, for geographical indications are published for opposition, and shall provide procedures to effect opposition of geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel any registration resulting from an application or a petition.

17.4.8. Each Party shall ensure that measures governing the filing of applications or petitions, as the case may be, for geographical indications set out clearly the procedures for these actions. **Such procedures shall include contact information sufficient for applicants or petitioners to obtain specific procedural guidance regarding the processing of applications or petitions.**

**17.4.9. The Parties acknowledge the principle of exclusivity incorporated in the Paris Convention and TRIPS Agreement, with respect to rights in trademarks.**

Note: Pursuant to Article 17.12.2(a) Final Provisions, amendments to the domestic legislation of a Party or financial resources required for the full implementation of the obligation contained in Article 17.4(1) through 17.4(9) on geographical indications, shall be in force or available as soon as practicable and in no event later than two years from the date of entry into force of the Agreement

15.3.5. Each Party shall ensure that applications or petitions, as the case may be, for geographical indications are published for opposition, and shall provide procedures for opposing geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel any registration resulting from an application or a petition.

15.3.6. Each Party shall ensure that measures governing the filing of applications or petitions, as the case may be, for geographical indications set out clearly the procedures for these actions. **Each Party shall make available contact information sufficient to allow (a) the general public to obtain guidance concerning the procedures and processing in general; and (b) applicants, petitioners, or their representatives to obtain status information and procedural guidance concerning specific applications and petitions.**

*NO CORRESPONDING PARAGRAPH*

17.4.10. After the date of entry into force of this Agreement, each Party shall ensure that grounds for refusing protection or registration of a geographical indication include the following:

(a) the geographical indication is confusingly similar to a pre-existing pending good faith application for a trademark or a pre-existing trademark registered in that Party; or

(b) the geographical indication is confusingly similar to a pre-existing trademark, the rights to which have been acquired through use in good faith in that Party.

*Relationship between Trademarks and Geographical Indications*

15.3.7. Each Party shall ensure that grounds for refusing protection or recognition of a geographical indication include the following:

(a) the geographical indication is likely to be confusingly similar to a trademark that is the subject of a good-faith pending application or registration; and

(b) the geographical indication is likely to be confusingly similar to a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law.<sup>9</sup>

Note: **Costa Rica, the Dominican Republic, Guatemala, Honduras and Nicaragua** may delay giving effect to Article 15.3.7 for no longer than **two years**, beginning on the date of entry into force of DR-CAFTA (DR-CAFTA Art. 15.12.2). **Guatemala** may delay giving effect to Article 15.3.7 for no longer than **six months**, beginning on the date of entry into force of DR-CAFTA (DR-CAFTA Art. 15.12.2).

*NO CORRESPONDING FOOTNOTE*

<sup>9</sup> For purposes of this paragraph, the Parties understand that each Party has already established grounds for refusing protection of a trademark, under its law, including that (a) the trademark is likely to be confusingly similar to a geographical indication that is the subject of a registration; (b) and that the trademark is likely to be confusingly similar to a pre-existing geographical indication, the rights to which have been acquired in accordance with the Party's law.

17.4.11. Within six months of the entry into force of this Agreement, each Party shall communicate to the public the means by which it intends to implement paragraphs 2 through 10.

*NO CORRESPONDING PARAGRAPH*



*Article 17.5: Copyright<sup>6\*</sup>*

*Article 15.5: Obligations Pertaining to Copyright and Related Rights<sup>\*</sup>*

<sup>6</sup> Except as provided in Article 17.12(2), each Party shall give effect to this Article upon the date of entry into force of this Agreement.

*\*Note: Article 17.5 pertains to copyright only unlike the equivalent provision of DR-CAFTA that applies to both copyright and related rights. Differences in language due to this difference in structure have not been highlighted.*

17.5.1. Each Party shall provide that authors <sup>7</sup> of literary and artistic works have the right <sup>8</sup> to authorize or prohibit all reproductions of their works, in any manner or form, permanent or temporary (including temporary storage in electronic form).

<sup>7</sup> References to “authors” in this chapter refer also to any successors in interest.

<sup>8</sup> With respect to copyrights and related rights in this Chapter, a right to authorize or prohibit or a right to authorize shall mean an exclusive right.

Note: Pursuant to Article 17.12.2(a) Final Provisions, amendments to the domestic legislation of a Party or financial resources required for the full implementation of the obligation contained in Article 17.5.(1) on temporary copies, shall be in force or available as soon as practicable and in no event later than two years from the date of entry into force of the Agreement.

Note: [See footnote 17](#)

*\*Note: This Article applies to both copyright and related rights unlike Art. 17.5 of CHILE-U.S. that applies only to copyright. Differences in language due to this difference in structure have not been highlighted.*

15.5.1. Each Party shall provide that authors, performers and producers of phonograms <sup>10</sup> have the right <sup>11</sup> to authorize or prohibit all reproductions of their works, performances, or phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form).<sup>12</sup>

<sup>10</sup> References in this Chapter to “authors, performers and producers of phonograms” refer also to any successors in interest.

<sup>11</sup> With respect to copyrights and related rights in this Chapter, a right to authorize means an exclusive right.

<sup>12</sup> The Parties understand that the reproduction right as set out in this paragraph and in Article 9 of the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (Berne Convention) and the exceptions permitted under the Berne Convention and Article 15.5.10(a) fully apply in the digital environment, in particular to the use of works in digital form.

17.5.2. Without prejudice to the provisions of Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii), and 14*bis*(1) of the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (Berne Convention), each Party shall provide to authors of literary and artistic works the right to authorize or prohibit 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 these works from a place and at a time individually chosen by them.<sup>9</sup>

15.6. Without prejudice to Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii), and 14*bis*(1) of the Berne Convention, each Party shall provide to authors the **exclusive** right to authorize or prohibit the communication to the public of their works, **directly or indirectly**, 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 these works from a place and at a time individually chosen by them.

<sup>9</sup> It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. It is further understood that nothing in this Article precludes a Party from applying Article 11*bis*(2) of the Berne Convention.

*NO CORRESPONDING FOOTNOTE*

17.5.3. Each Party shall provide to authors of literary and artistic works the right to authorize the making available to the public of the original and copies<sup>10</sup> of their works through sale or other transfer of ownership.

15.5.2. Each Party shall provide to authors, performers, and producers of phonograms the right to authorize the making available to the public of the original and copies of their works, performances and phonograms<sup>13</sup> through sale or other transfer of ownership.

<sup>10</sup> The expressions “copies” and “original and copies”, being subject to the right of distribution under this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects, *i.e.*, for this purpose, “copies” means physical copies.

*NO CORRESPONDING FOOTNOTE*

*NO CORRESPONDING FOOTNOTE*

<sup>13</sup> With respect to copyright and related rights in this Chapter, a “performance” refers to a performance fixed in a phonogram, unless otherwise specified.

17.5.4. Each Party shall provide that where the term of protection of a work (including a photographic work) is calculated:

(a) 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;  
and

(b) on a basis other than the life of a natural person, the term shall be

15.5.4. Each Party shall provide that, where the term of protection of a work (including a photographic work), performance or phonogram is to be calculated:

(a) 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;  
and

(b) on a basis other than the life of a natural person, the term shall be:

(i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, or

(ii) failing such authorized publication within 50 years from the creation of the work, not less than 70 years from the end of the calendar year of the creation of the work.

(i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance or phonogram, or

(ii) failing such authorized publication within 50 years from the creation of the work, performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance or phonogram.

**Note: Guatemala and the Dominican Republic** may delay giving effect to Article 15.5.4 for no longer than **six months**, beginning on the date of entry into force of DR-CAFTA (DR-CAFTA Art. 15.12.2).

#### Article 17.6: Related Rights 11\*

*\*Note: Article 17.6 pertains to related rights only unlike the equivalent provision of DR-CAFTA that applies to both copyright and related rights. Differences in language due to this difference in structure have not been highlighted.*

17.6.1. Each Party shall provide that performers and producers of phonograms<sup>12</sup> have the right to authorize or prohibit all reproductions of their performances or phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form).

<sup>11</sup> Except as provided in Article 17.12(2), each Party shall give effect to this Article upon the date of entry into force of this Agreement.

<sup>12</sup> References to “performers and producers of phonograms” in this Chapter refer also to any successors in interest.

15.5.1. Each Party shall provide that authors, performers and producers of phonograms<sup>10</sup> have the right<sup>11</sup> to authorize or prohibit all reproductions, in any manner or form, permanent or temporary (including temporary storage in electronic form).<sup>12</sup>

**NO CORRESPONDING FOOTNOTE**

<sup>10</sup> References in this Chapter to “authors, performers and producers of phonograms” include any successors in interest.

Note: A corresponding footnote is included in Article 17.5(1).

<sup>11</sup> With respect to copyrights and related rights in this Chapter, a right to authorize or prohibit or a right to authorize means an exclusive right.

NO CORRESPONDING FOOTNOTE

<sup>12</sup> The Parties understand that the reproduction right as set out in this paragraph and in Article 9 of the *Berne Convention for the Protection of Literary and Artistic Works (1971)* (Berne Convention) and the exceptions permitted under the Berne Convention and Article 15.5.10(a) fully apply in the digital environment, in particular to the use of works in digital form.

Note: Pursuant to Article 17.12.2(a) Final Provisions, amendments to the domestic legislation of a Party or financial resources required for the full implementation of the obligation contained in Article 17.6.(1) on temporary copies, shall be in force or available as soon as practicable and in no event later than two years from the date of entry into force of the Agreement.

17.6.2. Each Party shall provide to performers and producers of phonograms the right to authorize the making available to the public of the original and copies <sup>13</sup> of their performances or phonograms through sale or other transfer of ownership.

15.5.2. Each Party shall provide to authors, performers, and producers of phonograms the right to authorize the making available to the public of the original and copies of their works, performances, and phonograms <sup>13</sup> through sale or other transfer of ownership.

<sup>13</sup> The expressions “copies” and “original and copies”, being subject to the right of distribution under this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects, *i.e.*, for this purpose, “copies” means physical copies.

<sup>13</sup> With respect to copyright and related rights in this Chapter, a “performance” refers to a performance fixed in a phonogram, unless otherwise specified.

17.6.3. Each Party shall accord the rights provided under this Chapter to the performers and producers of phonograms who are **persons** of the other Party and to performances or phonograms first published or first fixed in a Party. A performance or phonogram shall be considered first published in any Party in which it is published within 30 days of its original publication.<sup>14</sup>

15.7.1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms who are **nationals** of another Party and to performances or phonograms first published or fixed in **the territory of** a Party. A performance or phonogram shall be considered first published in **the territory of** a Party in which it is published within 30 days of its original publication.<sup>14</sup>

<sup>14</sup> For the application of Article 17.6(3), fixation means the finalization of the master tape or its equivalent.

<sup>14</sup> For purposes of this Article, fixation includes the finalization of the master tape or its equivalent.

17.6.4. Each Party shall provide to performers the right to authorize or prohibit:

15.7.2. Each Party shall provide to performers the right to authorize or prohibit

(a) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance, and

(b) the fixation of their unfixed performances.

(a) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and

(b) the fixation of their unfixed performances.

17.6.5. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting or any communication to the public of their fixed performances or phonograms, by wire or wireless means, including the making available to the public of those performances 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.

15.7.3. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means, including the making available to the public of those performances 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.

(b) Notwithstanding paragraph 5(a) and Article 17.7 (3), the right to authorize or prohibit the broadcasting or communication to the public of performances or phonograms through analog communication and free over-the-air broadcasting, and the exceptions or limitations to this right for such activities, shall be a matter of domestic law. Each Party may adopt exceptions and limitations, including compulsory licenses, to the right to authorize or prohibit the broadcasting or communication to the public of performances or phonograms in respect of other noninteractive transmissions in accordance with Article 17.7(3). Such compulsory licenses shall not prejudice the right of the performer or producer of a phonogram to obtain equitable remuneration.

(b) Notwithstanding subparagraph (a) and Article 15.5.10, the application of this right to traditional free over-the-air noninteractive broadcasting, and exceptions or limitations to this right for such broadcasting, shall be a matter of domestic law.

(c) Each Party may adopt limitations to this right in respect of other noninteractive transmissions in accordance with Article 15.5.10, provided that the limitations do not be prejudice the right of the performer or producer of phonograms to obtain equitable remuneration.

Note: Pursuant to Article 17.12.2(b) Final Provisions, amendments to the domestic legislation of a Party or financial resources required for the full implementation of the obligation contained in Article 17.6.(5) with respect to the right of communication to the public and non-interactive digital transmissions, for performers and producers of phonograms, shall be in force or available as soon as practicable and in no event later than four years from the date of entry into

force of the Agreement.	
17.6.6. Neither Party shall subject the enjoyment and exercise of the rights of performers and producers of phonograms provided for in this Chapter to any formality.	15.7.4. No Party may subject the enjoyment and exercise of the rights of performers and producers of phonograms provided for in this Chapter to any formality.
17.6.7. Each Party shall provide that where the term of protection of a performance or phonogram is to be calculated on a basis other than the life of a natural person, the term shall be:	15.5.4. Each Party shall provide that, where the term of protection of a work (including a photographic work), performance or phonogram is to be calculated:
(a) not less than 70 years from the end of the calendar year of the first authorized publication of the performance or phonogram, or	(a) 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; and
(b) failing such authorized publication within 50 years from the fixation of the performance or phonogram, not less than 70 years from the end of the calendar year of the fixation of the performance or phonogram.	(b) on a basis other than the life of a natural person, the term shall be:  (i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance or phonogram, or  (ii) failing such authorized publication within 50 years from the creation of the work, performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance or phonogram.
17.6.8. For the purposes of Articles 17.6 and 17.7, the following definitions apply with respect to performers and producers of phonograms:	15.7.5. For the purposes of this Article and Article 15.5, the following definitions apply with respect to performers and producers of phonograms:

(a) **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;

(b) **phonogram** means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;<sup>15</sup>

(c) **fixation** means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

(d) **producer of a phonogram** means the person, or the legal entity, who or which 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;

(e) **publication** of a **fixed** performance or a phonogram means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity;

(f) **broadcasting** means the transmission by wireless means **for public reception** of sounds or of images and sounds or of the representations thereof; **such transmission by satellite is also broadcasting**; transmission of encrypted signals is broadcasting where the means for decrypting are provided to the public by the broadcasting organization or with its consent; and

(g) **communication to the public** of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of Article 17.6(5) “communication to the public” includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

(a) **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;

(b) **phonogram** means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

(c) **fixation** means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

(d) **producer of a phonogram** means the person, or the legal entity, who or which 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;

(e) **publication of a performance or a phonogram** means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity;

(f) **broadcasting** means the transmission by wireless means or satellite **to the public** of sounds or sounds and images, or of the representations thereof, including **wireless** transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organization or with its consent; and

(g) **communication to the public** of a performance or a phonogram means the transmission to the public by any medium, otherwise than broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For purposes of paragraph 3, “communication to the public” includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

<sup>15</sup> It is understood that the definition of phonogram provided in this Chapter does not suggest that rights in the phonogram are in any way affected through their incorporation into a cinematographic or other audiovisual work.

NO CORRESPONDING FOOTNOTE

*Article 17.7: Obligations Common to Copyright and Related Rights<sup>16</sup>*

<sup>16</sup> Except as provided in Article 17.12(2), each Party shall give effect to this Article upon the date of entry into force of this Agreement.

17.7.1. Each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer and producer is also required. Likewise, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required.

15.5.3. In order to ensure that no hierarchy is established between rights of authors, on the one hand, and rights of performers and producers of phonograms, on the other hand, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required. Likewise, each Party shall establish that in cases where authorization is needed from both the author of a work embodied in a phonogram and of a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required.

NO CORRESPONDING PARAGRAPH

15.5.5. Each Party shall apply the provisions of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, *mutatis mutandis*, to the subject matter, rights and obligations provided for in this Article and Articles 15.6 through 15.7.

17.7.2. (a) Each Party shall provide that for copyright and related rights:

15.5.6. Each Party shall provide that for copyright and related rights:

(i) any person owning any economic right, *i.e.*, not a moral right, may freely and separately transfer such right by contract; and

(a) any person acquiring or holding any economic right in a work, performance, or phonogram may freely and separately transfer such right by contract; and



(ii) any person who **has acquired or owns** any such economic right by virtue of a contract, including contracts of employment underlying the creation of works and phonograms, shall **be permitted** to exercise that right in its own name and enjoy fully the benefits derived from that right.

(b) any person **acquiring or holding** any such economic right by virtue of a contract, including contracts of employment underlying the creation of works **and performances**, and **production of** phonograms, shall **be able** to exercise such right in that person's own name and enjoy fully the benefits derived from such right.

**(b) Each Party may establish:**

**(i) which contracts of employment underlying the creation of works or phonograms shall, in the absence of a written agreement, result in a transfer of economic rights by operation of law; and**

**(ii) reasonable limits to the provisions in paragraph 2(a) to protect the interests of the original right holders, taking into account the legitimate interests of the transferees.**

*NO CORRESPONDING PARAGRAPH*

17.7.3. Each Party shall confine limitations or exceptions to rights to certain special cases which 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.<sup>17</sup>

15.5.10. (a) With respect to Articles 15.5, 15.6, and 15.7, 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.

*NO CORRESPONDING PARAGRAPH*

**15.5.10. (b) Notwithstanding subparagraph (a) and Article 15.7.3(b), no Party may permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal.**

17 Article 17.7(3) permits a Party to carry forward and appropriately extend into the digital environment limitations and exceptions in its domestic laws which have been considered acceptable under the Berne Convention. Similarly, these provisions permit a Party to devise new exceptions and limitations that are appropriate in the digital network environment. For works, other than computer software, and other subject-matter, such exceptions and limitations may include temporary acts of reproduction which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable (a) a lawful transmission in a network between third parties by an intermediary; or (b) a lawful use of a work or other subject-matter to be made; and which have no independent economic significance.

Article 17.7(3) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention, the *WIPO Copyright Treaty* (1996), and the *WIPO Performances and Phonograms Treaty* (1996).

17.7.4. In order to confirm that all federal or central government agencies use computer software only as authorized, each Party shall issue appropriate laws, orders, regulations, or administrative or executive decrees to actively regulate the acquisition and management of software for such government use. Such measures may take the form of procedures such as preparing and maintaining inventories of software present on agencies' computers and inventories of software licenses.

17.7.5.  
Note: Pursuant to Article 17.12.2(c) Final Provisions, amendments to the domestic legislation of a Party or financial resources required for the full implementation of the obligation contained in Article 17.7.(5) on effective technological measures, shall be in force or available as soon as practicable and in no event later than five years from the date of entry into force of the Agreement.

12 The Parties understand that the reproduction right as set out in this paragraph (15.5.1) and in Article 9 of the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (Berne Convention) and the exceptions permitted under the Berne Convention and Article 15.5.10(a) fully apply in the digital environment, in particular to the use of works in digital form.

15.5.9. In order to confirm that all agencies at the central level of government use computer software only as authorized, each Party shall issue appropriate laws, orders, regulations, or decrees to actively regulate the acquisition and management of software for such use. These measures may take the form of procedures such as preparing and maintaining inventories of software on agency computers and inventories of software licenses.

Note: The Dominican Republic, **Guatemala, Honduras and Nicaragua** may delay giving effect to Article 15.5.9 for no longer than **one year**, beginning on the date of entry into force of DR-CAFTA (DR-CAFTA Art. 15.12.2).

15.5.7.  
Note: **Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua** may delay giving effect to Articles 15.5.7(a)(ii), 15.5.7(e), 15.5.7(f) for no longer than **three years**, beginning on the date of entry into force of DR-CAFTA (DR-CAFTA Art. 15.12.2).

In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers, and producers of phonograms in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, **protected by copyright and related rights:**

17.7.5. (a) each Party shall provide that any person who **knowingly**<sup>18</sup> **circumvents without authorization of the right holder or law consistent with this Agreement** any effective technological measure that controls access to a protected work, performance, or phonogram **shall be civilly liable and, in appropriate circumstances, shall be criminally liable, or said conduct shall be considered an aggravating circumstance of another offense.**<sup>19</sup> **No Party is required to impose civil or criminal liability for a person who circumvents any effective technological measure that protects any of the exclusive rights of copyright or related rights in a protected work, but does not control access to such work.**

<sup>18</sup> For purposes of paragraph 5, knowledge may be demonstrated through reasonable evidence taking into account the facts and circumstances surrounding the alleged illegal act.

<sup>19</sup> Paragraph 5 does not obligate a Party 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 such product does not otherwise violate any measure implementing paragraph 5(b).

17.7.5. (b) each Party shall also **provide administrative or civil measures, and, where the conduct is willful and for prohibited commercial purposes, criminal measures** with regard to the manufacture, import, distribution, **sale, or rental** of devices, products, or components or the provision of services which:

15.5.7. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:

(i) circumvents without **authority** any effective technological measure that controls access to a protected work, performance, phonogram, **or other subject matter; or**

*NO CORRESPONDING FOOTNOTE*

*NO CORRESPONDING FOOTNOTE*

(ii) manufactures, imports, distributes, **offers to the public, provides or otherwise traffics** in devices, products or components or **offers to the public** or provides services, that:

(i) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure, or

(A) are promoted, advertised or marketed for the purpose of circumvention of any effective technological measure; or

(ii) do not have a commercially significant purpose or use other than to circumvent any effective technological measure, or

(B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or

(iii) are primarily designed, produced, adapted, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.

(C) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure, shall be liable and subject to the remedies provided for in Article 15.11.14.

Each Party shall ensure that due account is given, *inter alia*, to the scientific or educational purpose of the conduct of the defendant in applying criminal measures under any provisions implementing this subparagraph. A Party may exempt from criminal liability, and if carried out in good faith without knowledge that the conduct is prohibited, from civil liability, acts prohibited under this subparagraph that are carried out in connection with a nonprofit library, archive or educational institution.

Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public non-commercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities.

*NO CORRESPONDING SUBDIVISION*

15.5.7.(b) In implementing subparagraph (a), no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measure implementing subparagraph (a).

17.7.5. (c) Each Party shall ensure that nothing in subparagraphs (a) and (b) affects rights, remedies, limitations, or defenses with respect to copyright or related rights infringement.

15.5.7.(c) Each Party shall provide that a violation of a measure implementing this paragraph is a separate civil cause of action or criminal offense independent of any infringement that might occur under the Party's law on copyright and related rights.

17.7.5. (d) Each Party shall confine limitations and exceptions to measures implementing subparagraphs (a) and (b) to certain special cases that do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures. In particular, each Party may establish exemptions and limitations to address the following situations and activities in accordance with subparagraph (e):

15.5.7(d) Each Party shall confine exceptions to any measures implementing the prohibition in subparagraph (a)(ii) on technology, products, services, or devices that circumvent effective technological measures that control access to, and, in the case of clause (i), that protect any of the exclusive rights of copyright or related rights in, a protected work, performance, or phonogram referred to in subparagraph (a)(ii) to the following activities, provided that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

(i) when an actual or likely adverse effect on noninfringing uses with respect to a particular class of works or exceptions or limitation to copyright or related rights with respect to a class of users is demonstrated or recognized through a legislative or administrative proceeding established by law, provided that any limitation or exception adopted in reliance upon this subparagraph (d)(i) shall have effect for a period of not more than three years from the date of conclusion of such proceeding;

15.5.7(e)(iii) noninfringing uses of a work, performance, or phonogram, in a particular class of works, performances, or phonograms, when an actual or likely adverse impact on those noninfringing uses is demonstrated in a legislative or administrative proceeding by substantial evidence; provided that in order for any such exceptions or limitations to remain in effect for more than four years, a Party must conduct a review before the expiration of the four year period and at intervals of at least every four years thereafter, pursuant to which it is demonstrated in such a proceeding by substantial evidence that there is a continuing actual or likely adverse impact on the particular noninfringing use.

(ii) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to that person,<sup>20</sup> for the sole purpose of achieving interoperability of an independently created computer program with other programs;<sup>21</sup>

15.5.7.(d)(i) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person **engaged in those activities**, for the sole purpose of achieving interoperability of an independently created computer program with other programs;

<sup>20</sup> For greater certainty, elements of a computer program are not readily available to a person seeking to engage in noninfringing reverse engineering when they cannot be obtained from the literature on the subject, from the copyright holder, or from sources in the public domain.

*NO CORRESPONDING FOOTNOTE*

<sup>21</sup> Such activity occurring in the course of research and development is not excluded from this exception.

*NO CORRESPONDING FOOTNOTE*

(iii) noninfringing good faith activities, carried out by a researcher who has lawfully obtained a copy, performance, or display of a work, and who has made a **reasonable attempt** to obtain authorization for such activities, to the extent necessary for the sole purpose of identifying and analyzing flaws and vulnerabilities of **encryption technologies**;<sup>22</sup>

15.5.7.(d)(ii) noninfringing good faith activities, carried out by **an appropriately qualified** researcher who has lawfully obtained a copy, **unfixed** performance or display of a work, **performance, or phonogram**, and who has made a **good faith effort** to obtain authorization for such activities, to the extent necessary for the sole purpose of identifying and analyzing flaws and vulnerabilities of **technologies for scrambling and descrambling of information**;

<sup>22</sup> Such activity occurring in the course of research and development is not excluded from this exception.

*NO CORRESPONDING FOOTNOTE*

(iv) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a technology, product, service, or device that does not itself violate any measures implementing subparagraphs (a) and (b);

15.5.7.(d)(iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a technology, product, service, or device that itself is not prohibited under the measures implementing subparagraph (a)(ii); and

(v) noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network;

15.5.7.(d)(iv) noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network.

15.5.7(e) Each Party shall confine exceptions to any measures implementing the prohibition referred to in subparagraph (a)(i) to the activities listed in subparagraph (d) and the following activities, provided that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

(vi) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work;

15.5.7(e)(ii) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work; and

(vii) lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, or similar government activities; and

15.5.7(f) Each Party may provide exceptions to any measures implementing the prohibitions referred to in subparagraph (a) for lawfully authorized activities carried out by government employees, agents, or contractors for law enforcement, intelligence, essential security, or similar governmental purposes.

(viii) access by a nonprofit library, archive, or educational institution to a work not otherwise available to it, for the sole purpose of making acquisition decisions.

15.5.7(e)(i) access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram, not otherwise available to it, for the sole purpose of making acquisition decisions;

17.7.5.(e) Each Party may apply the exceptions and limitations for the situations and activities set forth in subparagraph (d) as follows:

(i) any measure implementing subparagraph (a) may be subject to the exceptions and limitations with respect to each situation and activity set forth in subparagraph (d).

(ii) any measure implementing subparagraph (b), as it applies to effective technological measures that control access to a work, may be subject to exceptions and limitations with respect to the activities set forth in subparagraphs (d)(ii), (iii), (iv), (v), and (vii).

(iii) any measure implementing subparagraph (b), as it applies to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to the activities set forth in subparagraph (d)(ii) and (vii).

NO CORRESPONDING SUBDIVISION

17.7.5.(f) **Effective technological measure** means any technology, device, or component that, in the normal course of its operation, controls access to a work, performance, phonogram, or any other protected material, or that protects any copyright or any rights related to copyright, and cannot, in the usual case, be circumvented accidentally.

15.5.7(g) **Effective technological measure** means any technology, device or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright or any rights related to copyright.



17.7.6. In order to provide **adequate and effective legal remedies** to protect rights management information:

17.7.6(a) each Party shall provide that any person who without authority, and 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,

(i) knowingly removes or alters any rights management information;

(ii) distributes or imports for distribution rights management information knowing that the rights management information has been altered without authority; or

(iii) distributes, imports for distribution, broadcasts, communicates, or makes available to the public copies of works or phonograms, knowing that rights management information has been removed or altered without authority, shall be liable, **upon the suit of any injured person**, and subject to the remedies in Article 17.11(5).

15.5.8. In order to provide **adequate legal protection and effective legal remedies** to protect rights management information:

15.5.8(a) Each Party shall provide that any person who, without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright or related right,

(i) knowingly removes or alters any rights management information;

(ii) distributes or imports for distribution rights management information knowing that the rights management information has been **removed or** altered without authority; or

Note: **Costa Rica, Guatemala, Honduras and Nicaragua** may delay giving effect to Article 15.5.8 (a)(ii) for no longer than **two years** and **El Salvador**, for no longer than **30 months**, beginning on the date of entry into force of DR-CAFTA (DR-CAFTA Art. 15.12.2).

(iii) distributes, imports for

Each Party shall provide for application of criminal procedures and remedies at least in cases where acts prohibited in the subparagraph are done willfully and for purposes of commercial advantage. A Party may exempt from criminal liability prohibited acts done in connection with a nonprofit library, archive, educational institution, or broadcasting entity established without a profit-making purpose.

distribution, broadcasts, communicates or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority, shall be liable and subject to the remedies provided for in Article 15.11.14.

Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution or public non-commercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities.

*NO CORRESPONDING SUBDIVISION*

15.5.8.(b) Each Party shall confine exceptions to measures implementing subparagraph (a) to lawfully authorized activities carried out by government employees, agents, or contractors for law enforcement, intelligence, national defense, essential security, or similar governmental purposes.

17.7.6.(b) **Rights management information** means:

15.5.8.(c) **Rights management information** means

(i) information which 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;

(i) 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; **or**

(ii) information about the terms and conditions of the use of the work, performance, or phonogram; **and**

(ii) information about the terms and conditions of the use of the work, performance or phonogram; **or**

(iii) any numbers or codes that represent such information, when any of these items is attached to a copy of the work, performance, or phonogram or appears in conjunction with the communication or making available of a work, performance, or phonogram to the public. Nothing in paragraph 6(a) requires the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the owner's work, performance, or phonogram or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

(iii) any numbers or codes that represent such information, 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. Nothing in this paragraph shall obligate a Party to require the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the work, performance, or phonogram, or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

17.7.7. Each Party shall apply Article 18 of the Berne Convention, *mutatis mutandis*, to all the protections of copyright and related rights and effective technological measures and rights management information in Articles 17.5, 17.6, and 17.7.

NO CORRESPONDING PARAGRAPH

Article 17.8: Protection of Encrypted Program-Carrying Satellite Signals

Article 15.8: Protection of Encrypted Program-Carrying Satellite Signals

Note: **Guatemala and Honduras** may delay giving effect to Article 15.8, and **Costa Rica, El Salvador, Nicaragua** to Article 15.8.1, for no longer than **18 months**, beginning on the date of entry into force of DR-CAFTA (DR-CAFTA Art. 15.12.2).

17.8.1. Each Party shall make it:

(a) a **civil or criminal** offense to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing<sup>23</sup> that the device or system's principal function is solely to assist in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and

(b) a **civil or criminal** offense willfully to receive or further distribute an encrypted program-carrying satellite signal knowing that it has been decoded without the authorization of the lawful distributor of the signal.

17.8.2. Each Party shall provide that any person injured by any activity described in subparagraphs 1(a) or 1(b), including any person that holds an interest in the encrypted programming signal or the content of that signal, shall be permitted to initiate a civil action under any measure implementing such subparagraphs.

<sup>23</sup> For purposes of paragraph 1, knowledge may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act.

*Article 17.9: Patents*

15.8.1. Each Party shall make it:

(a) a **criminal** offense to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and

(b) willfully to receive and further distribute a program-carrying signal that originated as an encrypted satellite signal knowing that it has been decoded without the authorization of the lawful distributor of the signal.

15.8.2. Each Party shall provide for civil remedies, including compensatory damages, for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted programming signal or its content.

*NO CORRESPONDING FOOTNOTE*

*Article 15.9: Patents*

17.9.1. Each Party shall make patents available for any invention, whether a product or a process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. For purposes of this Article, a Party may treat the terms "inventive step" and "capable of industrial application" as being synonymous with the terms "non-obvious" and "useful", respectively.

Note: Pursuant to Article 17.12.2(a) Final Provisions, amendments to the domestic legislation of a Party or financial resources required for the full implementation of the obligation contained in Article 17.9.(1) on patents, shall be in force or available as soon as practicable and in no event later than two years from the date of entry into force of the Agreement.

17.9.2. Each Party will undertake reasonable efforts, through a transparent and participatory process, to develop and propose legislation within 4 years from the entry into force of this Agreement that makes available patent protection for plants that are new, involve an inventive step, and are capable of industrial application.

17.9.3. 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.

Note: Pursuant to Article 17.12.2(a) Final Provisions, amendments to the domestic legislation of a Party or financial resources required for the full implementation of the obligation contained in Article 17.9.(3) on patents, shall be in force or available as soon as practicable and in no event later than two years from the date of entry into force of the Agreement.

15.9.1. Each Party shall make patents available for any invention, whether a product or a process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. For purposes of this Article, a Party may treat the terms "inventive step" and "capable of industrial application" as being synonymous with the terms "non-obvious" and "useful", respectively.

15.9.2. Nothing in this Chapter shall be construed to prevent a Party from excluding inventions from patentability as set out in Articles 27.2 and 27.3 of the TRIPS Agreement. Notwithstanding the foregoing, any Party that does not provide patent protection for plants by the date of entry into force of this Agreement shall undertake all reasonable efforts to make such patent protection available. Any Party that provides patent protection for plants or animals on, or after the date of entry into force of this Agreement shall maintain such protection.

15.9.3. A 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.

17.9.4. If a Party permits the use by a third party of the subject matter of a subsisting patent to support an application for marketing approval or sanitary permit of a pharmaceutical product, the Party shall provide that any product produced under such authority shall not be made, used, or sold in the territory of the Party other than for purposes related to meeting requirements for marketing approval or the sanitary permit, and if export is permitted, the product shall only be exported outside the territory of the Party for purposes of meeting requirements for issuing marketing approval or sanitary permits in the exporting Party.

17.9.5. A Party may revoke or cancel a patent only when grounds exist that would have justified a refusal to grant the patent.<sup>24</sup>

<sup>24</sup> Fraud in obtaining a patent may constitute grounds for revocation or cancellation

17.9.6. Each Party shall provide for the adjustment of the term of a patent, at the request of the patent owner, to compensate for unreasonable delays that occur in granting the patent. For the purposes of this paragraph, an unreasonable delay shall be understood to include a delay in the issuance of the patent of more than five years from the date of filing of the application in the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods of time attributable to actions of the patent applicant need not be included in the determination of such delays.

15.9.5. Consistent with paragraph 3, if a Party permits a third person to use the subject matter of a subsisting patent to generate information necessary to support an application for marketing approval of a pharmaceutical or agricultural chemical product, that Party shall provide that any product produced under such authority shall not be made, used or sold in the territory of that Party other than for purposes related to generating information to meet requirements for approval to market the product once the patent expires, and if the Party permits exportation, the product shall only be exported outside the territory of that Party for purposes of meeting marketing approval requirements of that Party.

15.9.4. Without prejudice to Article 5.A(3) of the Paris Convention, each Party shall provide that a patent may be revoked or cancelled only on grounds that would have justified a refusal to grant the patent. However, a Party may also provide that fraud, misrepresentation, or inequitable conduct may be the basis for revoking, canceling, or holding a patent unenforceable.

15.9.6. (a) Each Party, at the request of the patent owner, shall adjust the term of a patent to compensate for unreasonable delays that occur in granting the patent. For purposes of this paragraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods attributable to actions of the patent applicant need not be included in the determination of such delays.

Note: **Costa Rica, the Dominican Republic, Guatemala, Honduras and Nicaragua** may delay giving effect to Article 15.9.6 for no longer than **one year**, beginning on the date of entry into force of DR-CAFTA (DR-CAFTA Art. 15.12.2).

17.9.7. Neither Party shall use a public disclosure to bar patentability based upon a lack of novelty or inventive step if the public disclosure (a) was made or authorized by, or derived from, the patent applicant and (b) occurs within 12 months prior to the date of filing of the application in the Party.

Note: Pursuant to Article 17.12.2(a) Final Provisions, amendments to the domestic legislation of a Party or financial resources required for the full implementation of the obligation contained in Article 17.9.(7) on patents, shall be in force or available as soon as practicable and in no event later than two years from the date of entry into force of the Agreement.

*NO CORRESPONDING PARAGRAPH*

*NO CORRESPONDING PARAGRAPH*

*NO CORRESPONDING PARAGRAPH*

*NO CORRESPONDING PARAGRAPH*

*Article 17.10: Measures Related to Certain Regulated Products*

15.9.7. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step<sup>1</sup> 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 territory of the Party.

15.9.8. Each Party shall provide patent applicants with at least one opportunity to submit amendments, corrections, and observations in connection with their applications.

15.9.9. Each Party shall provide that a disclosure of a claimed invention shall be considered to be sufficiently clear and complete if it provides information that allows the invention to be made and used by a person skilled in the art, without undue experimentation, as of the filing date.

15.9.10. Each Party shall provide that a claimed invention is sufficiently supported by its disclosure if the disclosure reasonably conveys to a person skilled in the art that the applicant was in possession of the claimed invention as of the filing date.

15.9.11. Each Party shall provide that a claimed invention is industrially applicable if it has a specific, substantial, and credible utility.

*Article 15.10: Measures Related to Certain Regulated Products*

17.10.1. If a Party requires the submission of undisclosed information concerning the safety and efficacy of a pharmaceutical or agricultural chemical product which utilizes a new chemical entity, which product has not been previously approved, to grant a marketing approval or sanitary permit for such product, the Party shall not permit third parties not having the consent of the person providing the information to market a product based on this new chemical entity, on the basis of the approval granted to the party submitting such information. A Party shall maintain this prohibition for a period of at least five years from the date of approval for a pharmaceutical product and ten years from the date of approval for an agricultural chemical product.<sup>25</sup> Each Party shall protect such information against disclosure except where necessary to protect the public.

<sup>25</sup> Where a Party, on the date of its implementation of the TRIPS Agreement, had in place a system for protecting pharmaceutical or agricultural chemical products not involving new chemical entities from unfair commercial use which conferred a period of protection shorter than that specified in paragraph 1, that Party may retain such system notwithstanding the obligations of paragraph 1

*NO CORRESPONDING SUBDIVISION*

15.10.1. (a) If a Party requires, as a condition of approving the marketing of a new pharmaceutical or agricultural chemical product, the submission of undisclosed data concerning safety or efficacy, the Party shall not permit third persons, without the consent of the person who provided the information, to market a product on the basis of (1) the information or (2) the approval granted to the person who submitted the information for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of approval in the Party.<sup>14</sup>

15.10.1.(d) For purposes of this paragraph, each Party shall protect such undisclosed information against disclosure except where necessary to protect the public, and no Party may consider information accessible within the public domain as undisclosed data. Notwithstanding the foregoing, if any undisclosed information concerning safety and efficacy submitted to a Party, or an entity acting on behalf of a Party, for purposes of obtaining marketing approval is disclosed by such entity, the Party is still required to protect such information from unfair commercial use in the manner set forth in this Article.

<sup>14</sup> Where a Party, on the date of its implementation of the TRIPS Agreement, had in place a system for protecting pharmaceutical or agricultural chemical products not involving new chemical entities from unfair commercial use which conferred a period of protection shorter than that specified in paragraph 1, that Party may retain such system notwithstanding the obligations of paragraph 1.

15.10.1. (b) If a Party permits, as a condition of approving the marketing of a new pharmaceutical or agricultural chemical product, third persons to submit evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval, the Party shall not permit third persons, without the consent of the person who previously obtained such approval in the other territory, to obtain authorization or to market a product on the basis of (1) evidence of prior marketing approval in the other territory, or (2) information concerning safety or efficacy that was previously submitted to obtain marketing approval in the other territory for at least five years for



	<p>pharmaceutical products and ten years for agricultural chemical products from the date approval was granted in the Party's territory to the person who received approval in the other territory. In order to receive protection under this subparagraph, a Party may require that the person providing the information in the other territory seek approval in the Party within five years after obtaining marketing approval in the other territory.</p>
<p><i>NO CORRESPONDING SUBDIVISION</i></p>	<p>15.10.1.(c) For purposes of this paragraph, a new product is one that does not contain a chemical entity that has been previously approved in the Party.</p>
<p>17.10.2. With respect to pharmaceutical products that are subject to a patent, each Party shall:</p> <p>(a) make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the patent term as a result of the marketing approval process;</p>	<p>15.9.6(b) With respect to any pharmaceutical product that is covered by a patent, each Party shall make available a restoration of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term resulting from the marketing approval process related to the first commercial marketing of the product in that Party.</p>
<p><i>NO CORRESPONDING CHAPEAU</i></p>	<p>15.10.2. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting safety or efficacy information, to rely on evidence or information concerning the safety and efficacy of a product that was previously approved, such as evidence of prior marketing approval in the territory of a Party or in another country, that Party:</p>
<p>(b) make available to the patent owner the identity of any third party requesting marketing approval effective during the term of the patent; and</p>	<p>15.10.2.(b) Shall provide that the patent owner shall be informed of the request and the identity of any such other person who requests approval to enter the market during the term of a patent identified as claiming the approved product or its approved use.</p>
<p>(c) not grant marketing approval to any third party prior to the expiration of the patent term, unless by consent or acquiescence of the patent owner.</p>	<p>15.10.2.(a) shall implement measures in its marketing approval process to prevent such other persons from marketing a product covered by a patent claiming the product or its approved use during the term of that patent, unless by consent or acquiescence of the patent owner; and</p>

*Article 17.11: Enforcement of Intellectual Property Rights*

Note: Pursuant to Article 17.12.2(a) Final Provisions, amendments to the domestic legislation of a Party or financial resources required for the full implementation of the obligation contained in Article 17.11 on enforcement (including border measures), shall be in force or available as soon as practicable and in no event later than four years from the date of entry into force of the Agreement.

*Article 15.11: Enforcement of Intellectual Property Rights*

**Note:** Costa Rica, El Salvador, Guatemala, Honduras and **Nicaragua may delay giving effect to Articles 15.11.8 (Statutory damages) and 15.11.14 (civil remedies for effective technological measures and rights management information) for no longer than three years, beginning on the date of entry into force of DR-CAFTA.** Guatemala, Honduras and Nicaragua **may delay giving effect to Articles 15.11.20-22 and 25 (Border measures) for no longer than two years, beginning on the date of entry into force of DR-CAFTA.** Guatemala, Honduras and Nicaragua **may delay giving effect to Articles 15.11.23 (ex-officio border measures) for no longer than four years, and El Salvador for no longer than two years, beginning on the date of entry into force of DR-CAFTA.** Costa Rica, Guatemala and Honduras **may delay giving effect to Article 15.11.27 (Internet Service Providers) for no longer than 30 months, El Salvador for no longer than one year, the Dominican Republic for no longer than two years and Nicaragua for no longer than 3 years, beginning on the date of entry into force of DR-CAFTA (DR-CAFTA Art. 15.12.2).**

General Obligations

17.11.1. Each Party shall ensure that procedures and remedies set forth in this Article for enforcement of intellectual property rights are established in accordance with its domestic law.<sup>26</sup> Such administrative and judicial procedures and remedies, both civil and criminal, shall be made available to the holders of such rights in accordance with the principles of due process that each Party recognizes as well as with the foundations of its own legal system.

General Obligations

15.11.1. Each Party understands that procedures and remedies required under this Article for enforcement of intellectual property rights are established in accordance with:

- (a) the principles of due process that each Party recognizes; and
- (b) the foundations of its own legal system.

<sup>26</sup> Nothing in this Chapter prevents a Party from establishing or maintaining appropriate judicial or administrative procedural formalities for this purpose that do not impair each Party's rights and obligations under this Agreement.

*NO CORRESPONDING FOOTNOTE*

17.11.2. This Article does not create any obligation:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that already existing for the enforcement of law in general, or

(b) with respect to the distribution of resources for the enforcement of intellectual property rights and the enforcement of law in general.

The distribution of resources for the enforcement of intellectual property rights shall not excuse a Party from compliance with the provisions of this Article.

15.11.2. This Article 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 law in general, or

(b) with respect to the distribution of resources for the enforcement of intellectual property rights and the enforcement of law in general. The Parties understand that the decisions that a Party makes on the distribution of enforcement resources shall not excuse that Party from complying with this Chapter.

17.11.3. Final decisions **on the merits of a case** of general application shall be in writing and shall state the reasons or the legal basis upon which decisions are based.

*Note: Corresponding provision, see Art. 17.1.12 (General Provisions)*

15.11.3. Each Party shall provide that final **judicial decisions or administrative rulings** of general applicability **pertaining to the enforcement of intellectual property rights** shall be in **writing and shall state any relevant findings of fact** and the reasoning or the legal basis on which the decisions **and ruling** are based. Each Party shall provide that such decisions or rulings shall be published,<sup>16</sup> or where such publication is not practicable, otherwise made publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them.

**NO CORRESPONDING FOOTNOTE**

<sup>16</sup> **A Party may satisfy the requirement for publication by making the document available to the public on the Internet.**

17.11.4. Each Party shall publicize **or make available to the public** information that each Party might collect regarding its efforts to provide effective enforcement of intellectual property rights, including statistical information.

15.11.4. Each Party shall publicize information that it may collect on its efforts to provide effective enforcement of intellectual property rights **in its civil, administrative and criminal system**, including any statistical information.

17.11.5. **Each Party shall make available the civil remedies set forth in this Article for the acts described in the Articles 17.7(5) and 17.7(6).**

*Note: Corresponding provision, see Arts. 15.5.7(a) and 15.5.8(a)*

<p>17.11.6. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide that:</p>	<p>15.11.5. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide that:</p>
<p>(a) the natural person or legal entity whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram in the usual manner,<sup>27</sup> shall, in the absence of proof to the contrary, be presumed to be the designated right holder in such work, performance, or phonogram.</p>	<p>(a) the person whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram in the usual manner, shall, in the absence of proof to the contrary, be presumed to be the designated right holder in such work, performance; and phonogram;</p>
<p>(b) it shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter. A Party may require, as a condition for according such presumption of subsistence, that the work appear on its face to be original and that it bear a publication date not more than 70 years prior to the date of the alleged infringement.</p>	<p>(b) it shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter.</p>
<p><sup>27</sup> Each Party may establish the means by which it shall determine what constitutes the “usual manner” for a particular physical support.</p>	<p><i>NO CORRESPONDING FOOTNOTE</i></p>
<p><i>Civil and Administrative Procedures<sup>28</sup> and Remedies</i></p>	<p><i>Civil and Administrative Procedures and Remedies</i></p>
<p><sup>28</sup> For the purposes of this Article, civil judicial procedures mean those procedures as applied to the protection and enforcement of intellectual property rights.</p>	<p><i>NO CORRESPONDING FOOTNOTE</i></p>
<p>17.11.7. Each Party shall make available to right holders<sup>29</sup> civil judicial procedures concerning the enforcement of any intellectual property right.</p>	<p>15.11.6. Each Party shall make available to right holders<sup>17</sup> civil judicial procedures concerning the enforcement of any intellectual property right.</p>

29 For the purposes of this Article, the term “right holder” shall include duly authorized licensees as well as federations and associations having legal standing and authorization to assert such rights.

17 For the purpose of this Article, the term “right holder” shall include federations and associations as well as exclusive licensees and other duly authorized licensees, as appropriate, having the legal standing and authority to assert such rights. The term licensee shall include the licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

17.11.8. Each Party shall provide that:

(a) In civil judicial proceedings, the judicial authorities shall have the authority to order the infringer to pay the right holder:

15.11.7. Each Party shall provide that:

(a) in civil judicial proceedings concerning the enforcement property rights, 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 because of an infringement of that person’s intellectual property right by an infringer engaged in infringing activity, and

(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; and

(ii) at least in the case of infringements of trademark, copyright, or related rights, the profits of the infringer that are attributable to the infringement and are not already taken into account in determining injury.

(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 and are not taken into account in computing the amount of the actual damages referred to in clause (i); and.

(b) In determining **injury to the right holder**, the judicial authorities shall, *inter alia*, consider the **legitimate retail value of the infringed goods**.

(b) in determining **damages**, for infringement of intellectual property rights its the judicial authorities shall consider, *inter alia*, the **value of the infringed-upon good or service, based on the suggested retail price or other legitimate measure of value that right holder presents**.

17.11.9. In civil judicial proceedings, each Party shall, at least with respect to works protected by copyright or related rights and trademark counterfeiting, establish pre-established damages, prescribed by each Party's domestic law, **that the judicial authorities deem reasonable in light of the goals of the intellectual property system and the objectives set forth in this Chapter**.

15.11.8. In civil judicial proceedings, each Party shall, at least with respect to civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, establish **or maintain** pre-established damages **as an alternative to actual damages**. Such preestablished damages shall be set out in domestic law **and determined by the judicial authorities in an amount sufficient to compensate the right holder for the harm caused by the infringement and constitute a deterrent to future infringements**.

17.11.10. Each Party shall provide that, except in exceptional circumstances, its judicial authorities have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of copyright or related rights and trademark counterfeiting, that the prevailing **right holder** shall be **paid** the court costs or fees and reasonable attorney's fees by the **infringing party**.

15.11.9. Each Party shall provide that its judicial authorities, except in exceptional circumstances, **shall** have authority to order, at the conclusion of the civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, that the prevailing **party** shall be **awarded payment** of court costs or fees and reasonable attorneys' fees by the **losing party**. **Further, each Party shall provide that its judicial authorities, at least in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning patent infringement, that the prevailing party be awarded payment of reasonable attorneys' fees by the losing party**.

17.11.11. In civil judicial proceedings concerning copyright and related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods, and of material and implements **by means of which such goods are produced where necessary to prevent further infringement**.

15.11.10. In civil judicial proceedings concerning copyright or related right infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods, **any related materials and implements, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement**.

17.11.12. In civil judicial proceedings, each Party shall provide that:

(a) its judicial authorities shall have the authority to order, at their discretion, the destruction, except in exceptional cases, of the goods determined to be infringing goods;

(b) the charitable donation of goods that infringe copyright and related rights shall not be ordered by the judicial authorities without the authorization of the right holder other than in special cases that do not conflict with the normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder;

*Note: Corresponding provision, see Art. 17.11.12.d)*

c) the judicial authorities shall have the authority to order, at their discretion, that material and implements actually used in the manufacture of the infringing goods be destroyed. In considering such requests, the judicial authorities shall take into account, *inter alia*, the need for proportionality between the gravity of the infringement and remedies ordered, as well as the interests of third parties holding an ownership, possessory, contractual, or secured interest; and

15.11.11. Each Party shall provide that:

15.11.11.(a) its judicial authorities shall have the authority to order, at their discretion, the destruction of the goods that have been found to be pirated or counterfeit:

15.11.11 (c) the charitable donation of counterfeit trademark goods and goods that infringe copyright and related rights shall not be ordered by the judicial authorities without the authorization of the right holder, except that counterfeit trademark goods may in appropriate cases be donated to charity for use outside the channels of commerce, when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark. In no case shall the simple removal of the trademark unlawfully affixed be sufficient to permit the release of goods into the channels of commerce.

15.11.11 (b) its judicial authorities shall have the authority to order that materials and implements that have been used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, 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 requests for such destruction, the Party's judicial authorities may take into account, *inter alia*, the gravity of the infringement, as well as the interests of third parties holding an ownership, possessory, contractual, or secured interests.

(d) in regard to counterfeited trademarked goods, the simple removal of the trademark unlawfully affixed shall not permit release of the goods into the channels of commerce. However, such goods may be donated to charity when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark.

*Note: [Corresponding provision, see Art. 15.11.11\(c\)](#)*

17.11.13. In civil judicial proceedings, each Party shall provide that the judicial authorities shall have the authority to order the infringer to provide any information the infringer **may have** regarding **persons** involved in the infringement, and regarding **the distribution channels of infringing goods**. Judicial authorities shall also have the authority to impose **finances or imprisonment on infringers who do not comply with such orders, in accordance with each Party's domestic law.**

15.11.12. Each Party shall provide that in civil judicial proceedings **concerning the enforcement of intellectual property rights**, its the judicial authorities shall have the authority to order the infringer to provide any information that the infringer **possesses** regarding **any person(s)** involved in **any aspect of** the infringement and regarding **the means of production or distribution channel for the infringement goods or services, of such products, including the identification of third persons that are involved in their production and distribution and their distribution channels, and to provide this information to the right holder.** Each Party shall provide that its judicial authorities shall have the authority to impose **sanctions, in appropriate cases, on a party to a proceeding that fails to abide by valid orders issued by such authorities.**

17.11.14. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures **shall conform to principles equivalent in substance to those set forth in paragraphs 1 through 13.**

15.11.13. 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 provided for in **this Chapter.**



Note: [Corresponding provision, see 17.11.5](#)

15.11.14. Each Party shall provide for civil remedies against the acts described in Article 15.5.7 and 15.5.8. Available civil remedies shall include at least: (a) provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity; (b) actual damages (plus any profits attributable to the prohibited activity not taken into account in computing the actual damages) or pre-established damages as provided in paragraph 8; (c) payment to the prevailing right holder, at the conclusion of civil judicial proceedings, of court costs and fees and reasonable attorneys' fees by the party engaged in the prohibited conduct; and (d) destruction of devices and products found to be involved in the prohibited activity, at the discretion of the judicial authorities, as provided in subparagraphs (a) and (b) of paragraph 11. No Party may make damages available against a nonprofit library, archives, educational institution, or public broadcasting entity that sustains the burden of proving that it was not aware and had no reason to believe that its acts constituted a prohibited activity.

NO CORRESPONDING PARAGRAPH

15.11.15. 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, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods or to prevent their exportation.

Provisional Measures

17.11.15. Each Party shall provide that requests for relief *inaudita altera parte* shall be acted upon expeditiously in accordance with the judicial procedural rules of that Party.

**Provisional Measures**

15.11.17. Each Party shall act on requests for relief *inaudita altera parte* and execute such requests expeditiously, in accordance with its rules of judicial procedure.

17.11.16. Each Party shall provide that:

(a) its judicial authorities have the authority to require the applicant for any provisional measure to provide any reasonably available evidence in order to satisfy themselves to a sufficient degree of certainty that the applicant is the holder of the right in question<sup>30</sup> and that infringement of such right is imminent, and to order the applicant to provide a reasonable security or equivalent assurance in an amount that is sufficient to protect the defendant and prevent abuse, set at a level so as not to unreasonably deter recourse to such procedures.

15.11.18. Each Party shall provide that its judicial authorities shall have the authority to require the plaintiff to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff's right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

(b) in the event that judicial or other authorities appoint experts, technical or otherwise, that must be paid by the parties, such costs shall be set at a reasonable level taking into account the work performed, or if applicable, based on standardized fees, and shall not unreasonably deter recourse to provisional relief.

15.11.16. In the event that a Party's judicial or other authorities appoint experts, technical or other experts in civil proceedings concerning the enforcement of intellectual property rights and require that the parties bear the costs of such experts, the Party should seek to ensure that such costs are closely related, *inter alia*, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

<sup>30</sup> In accordance with the provisions in paragraph 6(a).

*NO CORRESPONDING FOOTNOTE*

*NO CORRESPONDING PARAGRAPH*

15.11.19. In proceedings concerning the grant of provisional measures in relation to enforcement of a patent, each Party shall provide for a rebuttable presumption that the patent is valid.

Special Requirements Related to Border Measures

**Special Requirements Related to Border Measures**

17.11.17. Each Party shall provide that any right holder initiating procedures for suspension **by the customs authorities** of the release of suspected counterfeit trademark or pirated copyright goods<sup>31</sup> into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the Party of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information to make the suspected goods reasonably recognizable to the **customs authorities**. The sufficient information required shall not unreasonably deter recourse to these procedures.

15.11.20. Each Party shall provide that any right holder initiating procedures for **its competent authorities** to suspend the release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods<sup>18</sup> into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, 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 suspected goods reasonably recognizable by the **competent authorities**. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures.

<sup>31</sup> For the purposes of paragraphs 17 through 19:

(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;

(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 a related right under the law of the country of importation.

<sup>18</sup> For the purposes of paragraphs 20 through 25:

(a) **counterfeit trademark goods** shall mean 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 **pirated copyright goods**, means shall mean 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 a related right under the law of the country of importation.

17.11.18. Each Party shall provide the competent authorities with the authority to require an applicant to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

15.11.21. Each Party shall provide that its competent authorities have the authority to require a right holder initiating procedures for suspension to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party shall provide that such security may take a form of an instrument issued by a financial services provider to hold the importer or owner of the imported merchandise 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.

17.11.19. Where the competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant the competent authorities the authority to inform the right holder, at the right holder's request, of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

15.11.22. Where its competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant its competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

17.11.20. Each Party shall provide that the competent authorities are permitted to initiate border measures *ex officio*, without the need for a formal complaint from a person or right holder. Such measures shall be used when there is reason to believe or suspect that goods being imported, destined for export, or moving in transit are counterfeit or pirated. In case of goods in transit, each Party, in conformity with other international agreements subscribed to by it, may provide that *ex officio* authority shall be exercised prior to sealing the container, or other means of conveyance, with the customs seal, as applicable.<sup>32</sup>

15.11.23. Each Party shall provide that its competent authorities may initiate border measures *ex officio*, with respect to imported, exported, or in transit merchandise suspected or infringing an intellectual property right, without the need for a formal complaint from a private party or right holder.

<sup>32</sup> The Parties recognize their obligations with respect to technological cooperation and other matters set forth in Chapter Five (Customs Administration), concerning, *inter alia*, improved customs enforcement, including with respect to intellectual property rights.

NO CORRESPONDING FOOTNOTE

17.11.21. Each Party shall provide that:

- (a) goods that have been found to be pirated or counterfeit by the competent authorities shall be destroyed, except in exceptional cases.
- (b) in regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.
- (c) in no event shall the competent authorities engage in, or permit, the re-exportation of counterfeit or pirated goods, nor shall they permit such goods to be subject to other customs procedures.

15.11.24. Each Party shall provide that goods that have been determined to be pirated or counterfeit by its competent authorities shall be destroyed, pursuant as appropriate to judicial order, unless the right holder consents to an alternate disposition, except that counterfeit trademark goods may in appropriate cases be donated to charity for use outside the channels of commerce, when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark. 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. In no event shall the competent authorities be authorized to permit the exportation of counterfeit or pirated goods or to permit, such goods to be subject to other customs procedures, except in exceptional circumstances.

*NO CORRESPONDING PARAGRAPH*

15.11.25. Each Party shall provide the where an application fee or merchandise storage fee is assessed in connection with border measures to enforce an intellectual property right, the fee shall not be set at an amount that unreasonably deters recourse to such measures.

*Criminal Procedures and Remedies*

17.11.22. Each Party shall provide for application of criminal procedures and penalties at least in cases of willful trademark counterfeiting or piracy, on a commercial scale, of works, performances, or phonograms protected by copyright or related rights. Specifically, each

Party shall ensure that:

- (a) (i) willfull infringement<sup>33</sup> of copyright and related rights for a commercial advantage or financial gain, is subject to criminal procedures and penalties;<sup>34</sup>
- (ii) copyright or related rights piracy

*Criminal Procedures and Remedies*

15.11.26. (a) 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. Willful copyright or related rights piracy on a commercial scale includes significant willful infringements of copyright or related rights, for purposes of commercial advantage or private financial gain, as well as willful infringements that have no direct or indirect motivation of financial gain, provided there is more than a *de minimis* financial harm. Each party shall treat willful importation or exportation of counterfeit or pirated goods as unlawful activities and provide for criminal penalties to the same extent as the trafficking or distribution of such goods in domestic commerce<sup>19</sup>.

on a commercial scale includes the willful infringing reproduction or distribution, including by electronic means, of copies with a significant aggregate monetary value, calculated based on the legitimate retail value of the infringed goods;

NO CORRESPONDING FOOTNOTE

<sup>19</sup> A Party may comply with this subparagraph in relation to exportation through its measures concerning distribution or trafficking.

(b) available remedies include sentences of imprisonment and/or monetary fines that are sufficient to provide a deterrent to future infringements and present a level of punishment consistent with the gravity of the offense, which shall be applied by the judicial authorities in light of, *inter alia*, these criteria;

(c) judicial authorities have the authority to order the seizure of suspected counterfeit or pirated goods, assets legally traceable to the infringing activity, documents and related materials, and implements that constitute evidence of the offense. Each Party shall further provide that its judicial authorities have the authority to seize items in accordance with its domestic law. Items that are subject to seizure pursuant to a search order need not be individually identified so long as they fall within general categories specified in the order;

(d) judicial authorities have the authority to order, among other measures, the forfeiture of any assets legally traceable to the infringing activity, and the forfeiture and destruction of all counterfeit and

15.11.26.(b) Specifically, each Party shall provide:

(j) remedies that include sentences of imprisonment and/or monetary fines sufficient to provide a deterrent to future acts of infringement. Each Party shall further establish policies or guidelines that encourage penalties to be imposed by judicial authorities at levels sufficient to provide a deterrent to future infringements.

(ji) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements that have been used in the commission of the offense, any assets traceable to the infringing activity, and any documentary evidence relevant to the offense. Each Party shall provide that items that are subject to seizure pursuant to any such judicial order need not be individually identified so long as they fall within general categories specified in the order.

(jii) that its judicial authorities shall have the authority to order, among other measures, (1) the forfeiture of any assets traceable to the infringing activity, (2) the forfeiture and destruction of all counterfeit or

pirated goods and, at least with respect to copyright and related rights piracy, any related materials and implements actually used in the manufacture of the pirated goods. Parties shall not make compensation available to the infringer for any such forfeiture or destruction; and

(e) Appropriate authorities, as determined by each Party, have the authority, in cases of copyright and related rights piracy and trademark counterfeiting, to exercise legal action ex officio without the need for a formal complaint by a person or right holder.

pirated goods, without compensation of any kind to the defendant, in order to prevent the re-entry of counterfeit and pirated goods into channels of commerce, and, (3) with respect to willful copyright or related rights piracy, the forfeiture and destruction of materials and implements that have been used in the creation of the infringing goods; and

(jv) that its authorities may, at least in cases of suspected trademark counterfeiting or copyright piracy, conduct investigations or exercise other enforcement measures ex officio, without the need for a formal complaint by a private party or right holder, at least for the purposes of preserving evidence or preventing the continuation of the infringing activity.

<sup>33</sup> For purposes of paragraph 22, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement.

NO CORRESPONDING FOOTNOTE

<sup>34</sup> For purposes of paragraph 22, commercial advantage or financial gain shall be understood to exclude de minimis infringements. Nothing in this Agreement prevents prosecutors from exercising any discretion that they may have to decline to pursue cases.

NO CORRESPONDING FOOTNOTE

#### *Limitations on Liability for Internet Service Providers*

#### *Limitations on Liability for Service Providers*

17.11.23. (a) For the purpose of providing enforcement procedures that permit effective action against any act of infringement of copyright <sup>35</sup> covered under this Chapter, including expeditious remedies to prevent infringements and criminal and civil remedies, each Party shall provide, consistent with the framework set forth in this Article:

15.11.27. For the purpose of providing enforcement procedures that permit effective action against any act of infringement of copyright <sup>20</sup> covered under this Chapter, including expeditious remedies to prevent infringements, and criminal and civil remedies that constitute a deterrent to further infringements, each Party shall provide, consistent with the framework set out in this Article:

(i) legal incentives for service providers to cooperate with copyright owners in deterring the unauthorized storage and transmission of copyrighted materials; and

(a) legal incentives for service providers to cooperate with copyright owners in deterring the unauthorized storage and transmission of copyrighted materials; and

(ii) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate, or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth below.

(b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set out in this subparagraph.<sup>21</sup>

<sup>35</sup> For purposes of paragraph 23, “copyright” shall also include related rights.

<sup>20</sup> For purposes of this paragraph, “copyright” shall also include related rights.

*Note: Corresponding provision, see Art. 17.11.23(b)*

<sup>21</sup> The parties understand that this subparagraph is without prejudice to the availability of defenses to copyright infringement that are of general applicability.

17.11.23.(b) These limitations shall preclude monetary relief and provide reasonable limitations on court-ordered relief to compel or restrain certain actions for the following functions and shall be confined to those functions:

(i) These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or restrain certain actions for the following functions and shall be confined to those functions:

(i) transmitting, routing, or providing connections for material without modification of its content;<sup>36</sup>

(A) transmitting, routing or providing connections for material without modification of its content, or the intermediate and transient storage of such material in the course thereof;



<p>(ii) caching carried out through an automatic process;</p>	<p>(B) caching carried out through an automatic process;</p>
<p>(iii) storage at the direction of a user of material residing on a system or network controlled or operated by or for the provider, including e-mails and its attachments stored in the provider's server, and web pages residing on the provider's server; and</p>	<p>(C) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and</p>
<p>(iv) referring or linking users to an online location by using information location tools, including hyperlinks and directories.</p>	<p>(D) referring or linking users to an online location by using information location tools, including hyperlinks and directories.</p>
<p><sup>36</sup> Modification of the content of material shall not include technological manipulation of material for the purpose of facilitating network transmission, such as division into packets.</p>	<p><i>NO CORRESPONDING FOOTNOTE</i></p>
<p>These limitations shall apply only where the provider does not initiate the transmission, or select the material or its recipients (except to the extent that a function described in subparagraph (iv) in itself entails some form of selection). This paragraph does not preclude the availability of other defenses to copyright infringement that are of general applicability, and qualification for the limitations as to each function shall be considered separately from qualification for the limitations as to other functions.</p>	<p>(ii) These limitations shall apply only where the service provider does not initiate the chain of transmission of the material, and does not select the material or its recipients (except to the extent that a function described in clause (i)(D) in itself entails some form of selection).</p> <p>(iii) Qualification by a service provider for the limitations as to each function in clauses (i)(A) through (i)(D) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in clauses (iv) through (vii).</p>

17.11.23.(c) With respect to function (b)(ii), the limitations shall be conditioned on the service provider:

(iv) With respect to the functions referred to in clause (i)(B), the limitations shall be conditioned on the service provider:

(i) complying with conditions on user access and rules regarding the updating of the cached material imposed by the supplier of the material;

(A) permitting access to cached material in significant part only to users of its system or network who have met conditions on user access to that material;

(B) complying with rules concerning the refreshing, reloading, or other updating of the cached material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available;

(ii) not interfering with technology consistent with widely accepted industry standards lawfully used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and

(C) not interfering with technology consistent with industry standards accepted in the Party's territory used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and

(iii) expeditiously removing or disabling access, upon receipt of an effective notification of claimed infringement in accordance with subparagraph (f), to cached material that has been removed or access to which has been disabled at the originating site.

(D) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.

With respect to functions (b)(iii) and (iv), the limitations shall be conditioned on the service provider:

(v) With respect to functions referred to in clauses (i)(C) and (D), the limitations shall be conditioned on the service provider:

(i) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;

(A) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;

(ii) expeditiously removing or disabling access to the material residing on its system or network upon obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, including through effective notifications of claimed infringement in accordance with subparagraph (f); and

(B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with clause (ix); and

<p>(iii) publicly designating a representative to receive such notifications.</p>	<p>(C) publicly designating a representative to receive such notifications.</p>
<p>(d) Eligibility for application of the limitations in this paragraph shall be conditioned on the service provider:</p>	<p>(vi) Eligibility for the limitations in this subparagraph shall be conditioned on the service provider:</p>
<p>(i) adopting and reasonably implementing<sup>37</sup> a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and</p>	<p>(A) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and</p>
<p>(ii) accommodating and not interfering with standard technical measures that lawfully protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of interested parties, approved by relevant authorities, as applicable, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.</p>	<p>(B) accommodating and not interfering with standard technical measures accepted in the Party's territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.</p>

Eligibility for application of the limitations in this paragraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

(vii) Eligibility for the limitations in this subparagraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

<sup>37</sup> A Party may determine in its domestic law that “reasonably implementing” entails, *inter alia*, making such policy continuously available to its users of its system or network.

NO CORRESPONDING FOOTNOTE

17.11.23.(e) If the service provider qualifies for the limitation with respect to function (b)(i), court-ordered relief to compel or restrain certain actions shall be limited to measures to terminate specified accounts, or to take reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in subparagraph (b), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary provided that such other remedies are the least burdensome to the service provider and users or subscribers among comparably effective forms of relief. Any such relief shall be issued with due regard for the relative burden to the service provider, to users or subscribers and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider’s communications network, such relief shall be available only where the service provider has received notice and an opportunity to appear before the judicial authority.

(viii) If the service provider qualifies for the limitations with respect to the function referred to in clause (i)(A), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts, or to taking reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in clause (i), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no

material adverse effect on the operation of the service provider's communications network, each Party shall provide that such relief shall be available only where the service provider has received notice and an opportunity to appear before the Party's judicial authority.

17.11.23.(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically<sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, *mutatis mutandis*, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.

(ix) For purposes of the notice and take down process for the functions referred to in clauses (i) (C) and (D), each Party shall establish appropriate procedures for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, *mutates mutandis*, as a notification of claimed infringement, and contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.

<sup>38</sup> In accordance with domestic law.

NO CORRESPONDING FOOTNOTE

17.11.23.(g) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, it shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify **the supplier of the material** that it has done so and, if **the supplier** makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the **original notifying party** seeks judicial relief within a reasonable time.

(x) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, **each Party shall provide that the service provider** shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify **the person making the material available on its system or network** that it has done so and, if **such person** makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the **person giving the original effective notification** seeks judicial relief within a reasonable time.

17.11.23.(h) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

(xi) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

(i) **Service provider** means, for purposes of function (b)(i), a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the user's choosing, **or** for purposes of functions (b)(ii) through (iv) a provider or operator of facilities for online services **(including in cases where network access is provided by another provider)** or network access.

(xii) **Service provider** means:  
(A) for purposes of the function referred to in clause (i)(A), a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the user's choosing, **and**

(B) for purposes of the functions referred to in clause (i)(B) through (i)(D), a provider or operator of facilities for online services or network access.

**Additional Procedures and Remedies**

15.11.28. Annex 15.11 applies between the Dominican Republic and the United States.

Art. 17.12. Final Provisions

Article 15.12: Final Provisions

1. Except as otherwise provided in this Chapter, each Party shall give effect to the provisions of this Chapter upon the date of entry into force of this Agreement.

1. Except as otherwise provided in paragraph 2 and Article 15.1, each Party shall give effect to the provisions of this Chapter upon the date of entry into force of this Agreement.

2. In those cases in which the full implementation of the obligations contained in this Chapter requires a Party to amend its domestic legislation or additional financial resources, those amendments and financial resources shall be in force or available as soon as practicable, and in no event later than:

2. As specified below, a Party may delay giving effect to certain provisions of this Chapter for no longer than the periods in this paragraph, measured from the date of entry into force of the Agreement:

Note: Each transitional period is indicated in the corresponding provision.

Note: Each transitional period is indicated in the corresponding provision.

NO CORRESPONDING ANNEX

**Annex 15.11**

**Procedures and Remedies Concerning Broadcast or Cable Transmissions or Retransmissions in the Dominican Republic**

1. The Dominican Republic reaffirms its commitments under Chapter 15 to the application of administrative, civil, and criminal procedures and remedies in the case of broadcast or cable transmissions or retransmissions that are made without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal.

2. The Dominican Republic shall provide that procedures and remedies are set out in its law for the temporary suspension of concessions or operating licenses, or both, for broadcast or cable transmissions or retransmissions in cases where the Oficina Nacional de Derecho de Autor (ONDA) or its other competent authorities determine that transmissions or retransmissions that are the subject of the concession or operating license have been made without the permission of the right holder or right holders of the content of the signal and, if any, of the signal. Such procedures shall conform to the requirements of Article 15.11



applicable to administrative enforcement, and shall include:

(a) an opportunity for right holders to make written requests to ONDA or other competent authorities for the temporary or permanent closure of establishments transmitting the unauthorized broadcast or cable transmissions (pursuant to Article 187 of the Ley sobre Derecho de Autor, No. 65-00, August 21, 2000, as implemented by Articles 116.4 and 116.5 of the Reglamento de Aplicación, No. 362-01, March 14, 2001), and for other sanctions available under its law, and to submit evidence in support of such requests;

(b) a requirement that holders of such concessions or operating licenses cooperate with ONDA or other competent authorities so that investigations and inspections concerning such a request can take place without delay, including by providing access to all documents relating to the transmissions or retransmissions; and

(c) a requirement that an administrative decision concerning such a request be rendered expeditiously and not later than 60 days after the date of the request. Such decisions shall be in writing and shall state the reasons on which they are based. Any closure shall become effective immediately following a decision requiring such closure. Temporary closure shall continue in effect for up to 30 days. Failure to cease transmission or retransmission following closure shall be considered a violation classified under Article 105(d) of the Ley General de

Telecomunicaciones, No. 153-98, May 27, 1998, and shall be subject to all available sanctions authorized by that law.

The Dominican Republic shall further provide that ONDA or other competent authorities may initiate procedures for the temporary or permanent competent authorities shall have sufficient resources to carry out the actions described in paragraph 2, and hereby reaffirms its obligations under Article 15.11.2(b).

4. INDOTEL shall exercise the powers conferred on it by the Ley General de Telecomunicaciones No. 153-98 to address copyright infringement in appropriate cases, consistent with the INDOTEL Resolution of January 30, 2004, sanctioning holders of cable transmission service authorizations who transmitted signals containing protected works or retransmitted signals issued by the entity originating the transmission without authorization. If the level of sanctions imposed in the INDOTEL Resolution of January 30, 2004 is not effective in eliminating the problem, then INDOTEL shall increase sanctions to an effective level.

5. The Dominican Republic shall provide quarterly reporting of progress made in all judicial actions concerning television broadcasting piracy consistent with the understanding set out in an exchange of letters between the Dominican Republic and the United States on the date of signature of this Agreement.