CHAPTER FOURTEEN
INTELLECTUAL PROPERTY RIGHTS

ARTICLE 14.1: GENERAL PROVISIONS

1. Each Party shall, at a minimum, give effect to this Chapter.

International Agreements and Recommendations

2. Each Party shall ratify or accede to the following agreements:

(a) the *Patent Cooperation Treaty* (1970), as amended in 1979;

(b) the *Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (1974);

(c) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (1989);

(d) the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1977), as amended in 1980;

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

(f) the *Trademark Law Treaty* (1994);

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

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

3. Each Party shall make best efforts to ratify or accede to the following agreements:

(a) the *Patent Law Treaty* (2000); and

(b) the *Hague Agreement Concerning the International Registration of Industrial Designs* (1999).

More Extensive Protection and Enforcement

4. A Party may 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.

National Treatment

5. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals[1] of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection[2] and enjoyment of such intellectual property rights and any benefits derived from such rights.

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[1] For purposes of Articles 14.1.5, 14.1.6, 14.2.12, and ,14.6.1 a national of a Party shall also mean, in respect of the relevant right, an entity located in such Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 14.1.2 and the TRIPS Agreement.

[2] For 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

6. A Party may derogate from paragraph 5 in relation to its judicial and administrative procedures, including any procedure requiring a national of the other 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.

7. Paragraph 5 does not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization in relation to the acquisition or maintenance of intellectual property rights.

Application of Agreement to Existing Subject Matter and Prior Acts

8. Except as otherwise provided in this Chapter, including Article 14.4.5, this Chapter gives rise to obligations in respect of all subject matter existing at 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 the terms of this Chapter.

9. Except as otherwise provided in this Chapter, including Article14.4.5, 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.

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

Transparency

11. Further to Article 17.1 (Publication), each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights are in writing and are published,[3] 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.

ARTICLE 14.2: TRADEMARKS, INCLUDING GEOGRAPHICAL INDICATIONS

1. Neither Party may require, as a condition of registration, that signs be visually perceptible and neither Party may deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or that the sign includes a scent.

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purposes of this paragraph, "protection" shall also include the prohibition on circumvention of effective technological measures pursuant to Article 14.4.7 and the provisions concerning rights management information pursuant to Article 14.4.8.

[3] For greater certainty, a Party may satisfy the requirement for publication by making it available to the public on the Internet

2. Each Party shall provide that trademarks shall include certification marks. Each Party shall also provide that signs that may serve, in the course of trade, as geographical indications may constitute certification or collective marks.[4]

3. Each Party shall ensure that its 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.

4. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, 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.

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

6. Article 6*bis* of the Paris Convention for the Protection of Industrial Property (1967) shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark,[5] 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.

7. 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 a refusal to register a trademark;

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

(c) providing an opportunity for interested parties to petition to oppose a trademark application or to seek cancellation of a trademark after it has been registered; and

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

8. Each Party shall provide (a) a system for the electronic application, processing, registration, and maintenance of trademarks, and (b) a publicly available electronic database – including an on-line database – of trademark applications and registrations.

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[4] Geographical indications means 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 (such as words - including geographical and personal names, as well as letters, numerals, figurative elements and colors, including single colors), in any form whatsoever, shall be eligible to be a geographical indication.

[5] In determining 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.

9. (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 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) *(*"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.

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

11. Neither Party may require recordation of trademark licenses to establish the validity of the license, to assert any rights in a trademark, or for other purposes.

12. If a Party provides the means to apply for protection or petition for recognition of geographical indications, through a system of protection of trademarks or otherwise, it shall accept those applications and petitions without the requirement for intercession by a Party on behalf of its nationals and shall:

(a) process applications or petitions, as the case may be, for geographical indications with a minimum of formalities.

(b) make the regulations governing filing of such applications or petitions, as the case may be, readily available to the public.

(c) provide 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 a registration resulting from an application or a petition.

(d) provide that measures governing the filing of applications or petitions for geographical indications set out clearly the procedures for these actions. Such procedures shall include contact information sufficient for applicants and/or petitioners to obtain specific procedural guidance regarding the processing.

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

(a) the geographical indication is likely to cause confusion with a trademark that is the subject of a good-faith pending application or registration; and

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

ARTICLE 14.3: DOMAIN NAMES ON THE INTERNET

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.

2. Each Party shall require that the management of its ccTLD provide online public access to a reliable and accurate database of contact information for domain-name registrants.

ARTICLE 14.4: OBLIGATIONS PERTAINING TO COPYRIGHT AND RELATED RIGHTS

1. Each Party shall provide that authors, performers, and producers of phonograms[6] have the right[7] to authorize or prohibit all reproductions of their works, performances, and phonograms[8], in any manner or form, permanent or temporary (including temporary storage in electronic form).

2. Each Party shall provide to authors, performers, and producers of phonograms the right of authorizing the making available to the public of the original and copies of their works, performances, and phonograms through sale or other transfer of ownership.

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 provide 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 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.

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, performance, or phonogram, or

[6] References to "authors, performers, and producers of phonograms" refer also to any successors in interest.

[7] With respect to copyrights and related rights in this Chapter, a right to authorize or prohibit or a right to authorize shall be construed to mean an exclusive right.

[8] With respect to copyright and related rights in this Chapter, a "performance" refers to a performance fixed in a phonogram, unless otherwise specified.

(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.

5. Each Party shall apply Article 18 of the Berne Convention (and Article 14.6 of the TRIPS Agreement), *mutatis mutandis,* to the subject matter, rights, and obligations in Articles 14.4 through 14.6.

6. Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right in a work, performance, or phonogram:

(a) may freely and separately transfer such right by contract; and

(b) by virtue of a contract, including contracts of employment underlying the creation of works, performances, and phonograms, shall be able to exercise those rights in that person's own name and enjoy fully the benefits derived from those rights.

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

(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, which:

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

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

(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 14.10.14. 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 noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in the above activities.

(b) **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 subject matter, or protects any copyright or any rights related to copyright.

(c) In implementing subparagraph (a), neither Party is 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 such product does not otherwise violate any measures implementing subparagraph (a).

(d) Each Party shall provide that a violation of the measures implementing this Article is a separate civil or criminal offence and independent of any infringement that might occur under the Party's law on copyright and related rights.

(e) Each Party shall confine exceptions to measures implementing subparagraph (a) to the following activities, which shall be applied to relevant measures in accordance with subparagraph (f):

(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 such activity, for the sole purpose of achieving interoperability of an independently created computer program with other programs;

(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;

(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);

(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;

(v) 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;

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

(vii) 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; and

(viii) non-infringing 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 non-infringing uses is demonstrated in a legislative or administrative proceeding by substantial evidence; provided that any limitation or exception adopted in reliance upon this subparagraph shall have effect for a renewable period of not more than three years from the date of conclusion of such proceeding.

(f) The exceptions to measures implementing subparagraph (a) for the activities set forth in Article 14.4.7(e) may only be applied as follows, and only to the extent that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

(i) measures implementing subparagraph (a)(i) may be subject to exceptions and limitations with respect to each activity set forth in subparagraph (e).

(ii) measures implementing subparagraph (a)(ii), as they apply to effective technological measures that control access to a work, performance, or phonogram, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (e)(i), (ii), (iii), (iv), and (vi).

(iii) measures implementing subparagraph (a)(ii), as they apply to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (e)(i) and (vi).

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

(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

(iii) distributes, imports for 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 14.10.15. 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 noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in the above activities.

(b) Each Party shall confine exceptions to the obligations in subparagraph (a) to lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar government activities.

(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; or

(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 this paragraph obligates 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.

9. Each Party shall issue appropriate laws, orders, regulations, or administrative or executive decrees mandating that its agencies use computer software only as authorized by the right holder. Such measures shall actively regulate the acquisition and management of software for government use.

10. (a) With respect to this Article and Articles 14.5 and 14.6, 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.

(b) Notwithstanding subparagraph (a) and Article 6.3(b), neither Party shall 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.

ARTICLE 14.5: OBLIGATIONS PERTAINING SPECIFICALLY TO COPYRIGHT

Without prejudice to the provisions of Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii), and 14bis(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, 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.

ARTICLE 14.6: OBLIGATIONS PERTAINING SPECIFICALLY TO RELATED RIGHTS

1. Each Party shall accord the rights provided for in this Chapter to the performers and producers of phonograms who are nationals of the other Party and to performances or phonograms first published or first fixed in the territory of the other Party. A performance or phonogram shall be considered first published in the territory of the other Party if it is published in that territory within 30 days of its original publication.[9]

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.

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 subparagraph (a) and Article 14.5.10, the application of this right to analog transmissions and free over-the-air broadcasts, and exceptions or limitations to this right for such activity, 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 4.4.10, which shall not be prejudicial to the right of the performer or producer of phonograms to obtain equitable remuneration.

4. 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.

5. For purposes of Articles 14.4 and 14.6, 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;

(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 who, or the legal entity 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;

[9] For purposes of this Article, fixation includes the finalization of the master tape or its equivalent.

(e) **publication of a performance or a phonogram** means the offering of copies of the performance or the phonogram to the public, with the consent of the rightholder, 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; "broadcasting" does not include transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public; 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 the purposes of paragraph 3, "communication to the public" includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

ARTICLE 14.7: PROTECTION OF ENCRYPTED PROGRAM-CARRYING SATELLITE SIGNALS

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) a criminal offense willfully to receive or 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.

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 the content of such signal.

ARTICLE 14.8: PATENTS

1. Each Party may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by law. Each Party may also exclude from patentability animals and diagnostic, therapeutic, and surgical procedures for the treatment of humans or animals.

2. Each Party shall make patents available for plant inventions. In addition, the Parties confirm that patents shall be available for any new uses or methods of using a known product, including products to be used for particular medical conditions, subject to the exclusions provided in Article 14.8.1 and the conditions of patentability.

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.

4. Each Party shall provide that a patent may be revoked only on grounds that would have justified a refusal to grant the patent. A Party may also provide that fraud, misrepresentation, or inequitable conduct may be the basis for revoking or holding a patent unenforceable. Where a Party provides proceedings that permit a third party to oppose the grant of a patent, a Party shall not make such proceedings available prior to the grant of the patent.

5. Consistent with paragraph 3, if a Party permits a third person to use the subject matter of a subsisting patent solely to support an application for marketing approval of a pharmaceutical 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 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.

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 the purposes of this paragraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than four years from the date of filing of the application in the Party, or two 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.

(b) With respect to any pharmaceutical product that is covered by a patent:

(i) each Party shall make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process related to the first commercial use of the product in that Party; and

(ii) where a Party approves the marketing of a new pharmaceutical product on the basis of information concerning the safety or efficacy of a same or a similar product in another territory, such as evidence of prior marketing approval, the Party shall make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term in the Party as a result of the marketing approval process in the other territory and in the Party.

For purposes of this paragraph, **effective patent term** means the period from the date of approval of the product until the original expiration date of the patent.

7. When a Party provides for the grant of a patent on the basis of a patent granted in another territory, that Party, at the request of the patent owner, shall extend the term of a patent granted under such procedure by a period equal to the period of the extension, if any, provided in respect of the patent granted by such other territory.

8. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step[10] if the public disclosure was (a) 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.

9. Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections, and observations.

10. Each Party shall provide that a disclosure of a claimed invention is 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.

11. 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.

ARTICLE 14.9: MEASURES RELATED TO CERTAIN REGULATED PRODUCTS

1. (a) If a Party requires or permits, as a condition of granting marketing approval for a new pharmaceutical or new agricultural chemical product, the submission of information concerning safety or efficacy of the product, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the Party, authorize another to market a same or a similar product based on:

(i) the safety or efficacy information submitted in support of the marketing approval; or

(ii) evidence of the marketing approval;

for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of marketing approval in the Party.

(b) If a Party requires or permits, in connection with granting marketing approval for a new pharmaceutical or agricultural chemical product, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval in the other territory, the Party shall not, without the consent of a person that previously submitted the safety or efficacy information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on:

(i) the safety or efficacy information submitted in support of the prior marketing approval in the other territory; or

[10] For purposes of this Article, the term "inventive step" will be treated as synonymous with the term "non-obvious."

(ii) evidence of prior marketing approval in the other territory;

for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of marketing approval of the new product in the Party.

(c) For purposes of this Article, a new pharmaceutical product is one that does not contain a chemical entity that has been previously approved in the Party for use in a pharmaceutical product and a new agricultural chemical product is one that contains a chemical entity that has not been previously approved in the Party for use in an agricultural chemical product.

2. (a) If a Party requires or permits, as a condition of granting marketing approval for a pharmaceutical product that includes a chemical entity that has been previously approved for marketing in another pharmaceutical product, the submission of new clinical information, other than information related to bioequivalency, the Party shall not, without the consent of a person that previously submitted such new clinical information to obtain marketing approval in the Party, authorize another to market a same or a similar product based on:

(i) the new clinical information submitted in support of the marketing approval; or

(ii) evidence of the marketing approval based on the new clinical information;

for at least three years from the date of marketing approval in the Party.

(b) If a Party requires or permits, in connection with granting marketing approval for a pharmaceutical product of the type specified in subparagraph (a), the submission of evidence concerning new clinical information for a product that was previously approved based on that new clinical information in another territory, other than evidence of information related to bioequivalency, such as evidence of prior marketing approval based on the new clinical information, the Party shall not, without the consent of the person that previously submitted such new clinical information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on:

(i) the new clinical information submitted in support of the prior marketing approval in the other territory; or

(ii) evidence of prior marketing approval based on the new clinical information in the other territory;

for at least three years from the date of marketing approval based on the new clinical information in the Party.

(c) If a Party requires or permits, as a condition of granting marketing approval, for a new use, for an agricultural chemical product that has been previously approved in the Party, the submission of safety or efficacy information, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the Party, authorize another to market a same or a similar product for that use based on:

(i) the submitted safety or efficacy information; or

(ii) evidence of the marketing approval for that use;

for at least ten years from the date of the original marketing approval of the agricultural chemical product in the Party.

(d) If a Party requires or permits, in connection with granting marketing approval, for a new use, for an agricultural chemical product that has been previously approved in the Party, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory for that new use, such as evidence of prior marketing approval for that new use, the Party shall not, without the consent of the person that previously submitted the safety or efficacy information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on:

(i) the safety or efficacy information submitted in support of the prior marketing approval for that use in the other territory; or

(ii) evidence of prior marketing approval in another territory for that new use

for at least ten years from the date of the original marketing approval granted in the Party.

3. When a product is subject to a system of marketing approval pursuant to paragraph 1 or 2 and is also covered by a patent in the territory of that Party, the Party shall not alter the term of protection that it provides pursuant to paragraphs 1 and 2 in the event that the patent protection terminates on a date earlier than the end of the term of protection specified in paragraphs 1 and 2.

4. 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 of safety or efficacy information of a product that was previously approved, such as evidence of prior marketing approval in the Party or in another territory, that Party:

(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 method of use during the term of that patent, unless by consent or acquiescence of the patent owner; and

(b) shall provide that the patent owner shall be notified of the identity of any such other person who requests marketing approval to enter the market during the term of a patent notified to the approving authority as covering that product.

ARTICLE 14.10: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

General Obligations

1. 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 upon which the decisions are based. Each Party shall also provide that such decisions or rulings shall be published,[11] 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.

2. Each Party shall publicize information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal system, including any statistical information that the Party may collect for such purposes. 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.

3. The Parties understand that a decision that a Party makes on the distribution of enforcement resources shall not excuse that Party from complying with the provisions of this Chapter.

4. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, 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, is the designated right holder in such work, performance, or phonogram. Each Party shall also provide for a presumption that, in the absence of proof to the contrary, the copyright or related right subsists in such subject matter.

Civil and Administrative Procedures and Remedies

5. Each Party shall make available to right holders[12] civil judicial procedures concerning the enforcement of any intellectual property right.

6. 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:

(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 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 damages referred to in clause (i).

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[11] The requirement for publication may be satisfied by making it available to the public on the Internet.

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

(b) in determining damages, the judicial authorities shall, *inter alia*, consider the value of the infringed-upon good or service, according to the suggested retail price or other legitimate measure of value put forth by the right holder of the infringed-upon good or service.

7. In civil judicial proceedings, each Party shall, at least with respect to works, phonograms, and performances protected by copyright or related rights, and in cases of trademark counterfeiting, establish or maintain a system of pre-established damages, which shall be available upon the election of the right holder and shall function so as to constitute a deterrent to infringements and to compensate fully the right holder for the harm caused by the infringement.

8. Each Party shall provide that its judicial authorities, except in exceptional circumstances, have the authority to order, at the conclusion of the civil judicial proceedings concerning copyright or related rights infringement and trademark infringement, that the prevailing party 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, 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.

9. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority 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.

10. Each Party shall provide that:

(a) in civil judicial proceedings, at the right holder's request, goods that have been found to be pirated or counterfeit shall be destroyed, except in exceptional circumstances;

(b) the authorities shall also 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; and

(c) in regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.

11. Each Party shall provide that in civil judicial proceedings, the judicial authorities shall have the authority to order the infringer to provide any information that the infringer possesses regarding any person(s) or entities involved in any aspect of the infringement and regarding the means of production or the distribution channel of such goods or services, including the identification of third parties that are involved in the production and distribution of the infringing goods or services and their channels of distribution, and to provide this information to the right holder.

12. Each Party shall provide that its judicial authorities have the authority to fine or imprison, in appropriate cases, a party to a litigation who fails to abide by valid orders issued by such authorities, and impose sanctions on parties to a litigation, their counsel, experts or other persons subject to the court's jurisdiction, for violation of its orders regarding the protection of confidential information produced or exchanged in a proceeding.

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 set forth in this Chapter.

14. Each Party shall provide for civil remedies against the acts described in Article 14.4.7 and Article 14.4.8. 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) the opportunity for the right holder to elect between actual damages it suffered (plus any profits attributable to the prohibited activity not taken into account in computing the actual damages) or pre-established damages;

(c) payment to the prevailing right holder of court costs and fees and reasonable attorney's fees by the party engaged in the prohibited conduct at the conclusion of the civil judicial proceedings; and

(d) destruction of devices and products found to be involved in the prohibited activity. No Party shall make damages available against a nonprofit library, archives, educational institution, or public noncommercial broadcasting entity that sustains the burden of proving that such entity was not aware and had no reason to believe that its acts constituted a prohibited activity.

15. In civil judicial proceedings, each Party shall provide that the judicial authorities have the authority to order a party to desist from an infringement, in order, *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.

16. In the event that judicial or other authorities appoint experts, technical or otherwise, that must be paid by a party to a litigation, such costs should be closely related, *inter alia*, to the quantity and nature of work to be performed and should not unreasonably deter recourse to such proceedings.

Provisional Measures

17. Parties shall act upon requests for relief *inaudita altera parte* expeditiously and generally execute such requests within 10 days, except in exceptional cases.

18. Each Party shall provide that its judicial authorities 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.

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

20. Each Party shall provide that any right holder initiating procedures for suspension by its competent authorities of the release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods[13] 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 its competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures. Each Party shall provide that the application to suspend the release of goods shall remain in force for a period of not less than one year from the date of application, or the period that the good is protected by copyright or the relevant trademark registration is valid, whichever is shorter.

21. Each Party shall provide that its competent authorities have 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. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party may provide that such security may be in the form of a bond conditioned to hold the 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 copy.

22. Where its competent authorities have made a determination that goods are counterfeit or pirated, each 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.

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

24. Each Party shall provide that goods that have been determined to be pirated or counterfeit by the competent authorities shall be destroyed, except in exceptional cases. 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, nor shall they be authorized to permit such goods to be subject to other customs procedures, except in exceptional circumstances.

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[13] For the purposes of this paragraphs 20-25:

(a) **counterfeit trademark goods** means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

(b) **pirated copyright goods** means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

25. Where an application fee or merchandise storage fee is assessed, each Party shall provide that such fee shall not be set at an amount that unreasonably deters recourse to these procedures.

Criminal Procedures and Remedies

26. 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 (i) significant willful infringements of copyright or related rights that have no direct or indirect motivation of financial gain, as well as (ii) willful infringement for purposes of commercial advantage or private financial gain. Willful importation or exportation of counterfeit or pirated goods shall be treated as unlawful activities subject to criminal penalties to the same extent as the trafficking or distribution of such goods in domestic commerce.

27. Specifically, each Party shall provide:

(a) remedies that include sentences of imprisonment as well as monetary fines sufficient to provide a deterrent to future acts of infringement consistent with a policy of removing the monetary incentive of the infringer. Each Party shall further establish policies or guidelines that encourage such fines to be imposed by judicial authorities at levels sufficient to provide a deterrent to future infringements;

(b) that its judicial authorities 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;

(c) that its judicial authorities have the authority to order, among other measures, the forfeiture of any assets traceable to the infringing activity and shall, except in exceptional cases, order the forfeiture and destruction of all counterfeit or pirated goods, and, at least with respect to willful copyright or related rights piracy, materials and implements that have been used in the creation of the infringing goods. Each Party shall further provide that such forfeiture and destruction shall occur without compensation of any kind to the defendant; and

(d) That its authorities may initiate legal action *ex officio*, without the need for a formal complaint by a private party or right holder.

28. Each Party shall also provide for criminal procedures and penalties to be applied in the following cases, even absent willful trademark counterfeiting or copyright piracy:

(a) the knowing trafficking in counterfeit labels affixed or designed to be affixed to a phonogram, to a copy of a computer program or to documentation or packaging for a computer program, or to a copy of a motion picture or other audiovisual work; and

(b) the knowing trafficking in counterfeit documentation or packaging for a computer program.

Limitations on Liability for Service Providers

29. For the purpose of providing enforcement procedures that permit effective action against any act of infringement of copyright 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:

(a) legal incentives for service providers to cooperate with copyright[14] owners in deterring the unauthorized storage and transmission of copyrighted materials; and

(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 forth in this subparagraph (b).[15]

(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:[16]

(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;

(B) caching carried out through an automatic process;

(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

(D) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

(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).

(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) – (vii).

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[14] For purposes of this article, "copyright" shall also include related rights.

[15] It is understood that this subparagraph is without prejudice to the availability of defenses to copyright infringement that are of general applicability.

[16] Either Party may request consultations with the other Party to consider how to address future functions of a similar nature under this paragraph.

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

(A) permitting access to cached material in significant part only to users of its system 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;

(C) not interfering with technology consistent with industry standards accepted in the territory of each Party 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

(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.

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

(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;

(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

(C) publicly designating a representative to receive such notifications.

(vi) Eligibility for the limitations in this subparagraph shall be conditioned on the service provider:

(A) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and

(B) accommodating and not interfering with standard technical measures accepted in the territory of each Party 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.

(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.

(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 of the court order proceedings referred to in this subparagraph and an opportunity to appear before the judicial authority.

(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. 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.

(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.

(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.

(xii) For purposes of the function referred to in clause (i)(A), service provider means 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 for purposes of the functions referred to in clauses (i)(B) through (i)(D) service provider means a provider or operator of facilities for online services or network access.

ARTICLE 14.11: TRANSITIONAL PROVISIONS

1. Except as provided in paragraph 2, each Party shall implement the obligations of this Chapter as of the date of entry into force of this Agreement.

2. Each Party shall ratify or accede to the agreements listed in paragraph 2(b) and (d) of Article 1 within one year of the date of entry into force of this Agreement.

Washington, D.C.
September 14, 2004

H.E. Abdulla Hassan Saif
Minister of Finance and National Economy
Kingdom of Bahrain

Dear Minister Saif:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and the Kingdom of Bahrain in the course of negotiations regarding Chapter Fourteen (Intellectual Property Rights) of the Free Trade Agreement ("Agreement") between our Governments signed this day:

> In meeting the obligations of Article 14.10.29(b)(ix), Bahrain agrees to adopt requirements for: (a) effective written notice to service providers with respect to materials that are claimed to be infringing and (b) effective written counter-notification by those whose material is removed or disabled and who claim that it was removed or disabled through mistake or misidentification, as set forth below. Substantial compliance with the elements listed below shall be deemed to be effective written notice or counter-notification.
>
> (*a*) *Model of an effective notice, by a copyright*[1] *owner or person authorized to act on behalf of an owner of an exclusive right, to a service provider's publicly designated representative*[2]
>
> In order for a notice to a service provider to comply with Article 14.10.29(b)(ix), it must be a written or electronic communication that includes substantially the following items:
>
> 1. The identity, address, telephone number, and electronic mail address of the complaining party (or its authorized agent).
>
> 2. Information that is reasonably sufficient to enable the service provider to identify the copyrighted work(s)[3] claimed to have been infringed.

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[1] All references to copyright in this letter are understood to include related rights, and all references to works are understood to include the subject matter of related rights.

[2] It is understood that a representative is publicly designated to receive notification on behalf of a service provider if the representative's name, physical and electronic address, and telephone number are posted on a publicly accessible portion of the service provider's website, and also in a public register publicly accessible through the Internet or such other form or manner appropriate for Bahrain.

3. Information that is reasonably sufficient to permit the service provider to identify and locate the material that is residing on a system or network controlled or operated by it or for it, that is claimed to be infringing or to be the subject of infringing activity, and that is to be removed or access to which is to be disabled.[4]

4. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law.

5. A statement that the information in the notice is accurate.

6. A statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the complaining party is the owner of an exclusive right that is allegedly infringed or is authorized to act on the owner's behalf.

7. The signature of the person giving notice.[5]

(b) Model of an Effective Counter-Notification by a Subscriber[6] Whose Material Was Removed or Disabled as a Result of Mistake or Misidentification of Material

In order for a counter-notification to a service provider to comply with Article 14.10.29(b)(ix), it must be a written or electronic communication that includes substantially the following items:

1. The identity, address, telephone number, and electronic mail address of the subscriber.

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[3] If multiple copyrighted works at, or linked to from, a single online site on a system or network controlled or operated by or for the service provider are covered by a single notification, a representative list of such works at, or linked to from, that site may be provided.

[4] In the case of notices regarding an information location tool under subparagraph (b)(i)(D) of Article 14.10.29, information provided must be reasonably sufficient to permit the service provider to locate the reference or link residing on a system or network controlled or operated by or for it, except that in the case of a notice regarding a substantial number of references or links at a single online site residing on a system or network controlled or operated by or for the service provider, a representative list of such references or links at the site may be provided, if accompanied by information sufficient to permit the service provider to locate the references or links.

[5] A signature transmitted as part of an electronic communication satisfies this requirement.

[6] All references to "subscriber" in this letter refer to the person whose material has been removed or disabled by a service provider as a result of an effective notice described in paragraph (a) of this letter.

2. Identification of the material that has been removed or to which access has been disabled.

3. The location at which the material appeared before it was removed or access to it was disabled.

4. A statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material.

5. A statement that the subscriber agrees to be subject to orders of any court that has jurisdiction over the place where the subscriber's address is located, or, if that address is located outside of the Party's territory, any other court with jurisdiction over any place in the Party's territory in which the service provider may be found, and in which a copyright infringement suit could be brought with respect to the alleged infringement.

6. A statement that the subscriber will accept service of process in any such suit.

7. The signature of the subscriber.[7]

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an integral part of the Agreement.

Sincerely,

Robert B. Zoellick

[7] A signature transmitted as part of an electronic communication satisfies this requirement.

September 14, 2004

Washington, D.C.

The Honorable Robert B. Zoellick
United States Trade Representative

Dear Ambassador Zoellick:

I have the honor to confirm receipt of your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States of America and the Kingdom of Bahrain in the course of negotiations regarding Chapter Fourteen (Intellectual Property Rights) of the Free Trade Agreement between our Governments signed this day:
>
> > In meeting the obligations of Article 14.10.29(b)(ix), Bahrain agrees to adopt requirements for: (a) effective written notice to service providers with respect to materials that are claimed to be infringing and (b) effective written counter-notification by those whose material is removed or disabled and who claim that it was removed or disabled through mistake or misidentification, as set forth below. Substantial compliance with the elements listed below shall be deemed to be effective written notice or counter-notification.
> >
> > (*a*) *Model of an effective notice, by a copyright*[8] *owner or person authorized to act on behalf of an owner of an exclusive right, to a service provider's publicly designated representative*[9]

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[8] All references to copyright in this letter are understood to include related rights, and all references to works are understood to include the subject matter of related rights.

[9] It is understood that a representative is publicly designated to receive notification on behalf of a service provider if the representative's name, physical and electronic address, and telephone number are posted on a publicly accessible portion of the service provider's website, and also in a public register publicly accessible through the Internet or such other form or manner appropriate for Bahrain.

In order for a notice to a service provider to comply with Article 14.10.29(b)(ix), it must be a written or electronic communication that includes substantially the following items:

1. The identity, address, telephone number, and electronic mail address of the complaining party (or its authorized agent).

2. Information that is reasonably sufficient to enable the service provider to identify the copyrighted work(s)[10] claimed to have been infringed.

3. Information that is reasonably sufficient to permit the service provider to identify and locate the material that is residing on a system or network controlled or operated by it or for it, that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled.[11]

4. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law.

5. A statement that the information in the notice is accurate.

6. A statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the complaining party is the owner of an exclusive right that is allegedly infringed or is authorized to act on the owner's behalf.

7. The signature of the person giving notice.[12]

[10] If multiple copyrighted works at, or linked to from, a single online site on a system or network controlled or operated by or for the service provider are covered by a single notification, a representative list of such works at, or linked to from, that site may be provided.

[11] In the case of notices regarding an information location tool under subparagraph (b)(i)(D) of Article 14.10.29, information provided must be reasonably sufficient to permit the service provider to locate the reference or link residing on a system or network controlled or operated by or for it, except that in the case of a notice regarding a substantial number of references or links at a single online site residing on a system or network controlled or operated by or for the service provider, a representative list of such references or links at the site may be provided, if accompanied by information sufficient to permit the service provider to locate the references or links.

[12] A signature transmitted as part of an electronic communication satisfies this requirement.

(b) Model of an Effective Counter-Notification by a Subscriber[13] *Whose Material Was Removed or Disabled as a Result of Mistake or Misidentification of Material*

In order for a counter-notification to a service provider to comply with Article 14.10.29(b)(ix), it must be a written or electronic communication that includes substantially the following items:

1. The identity, address, telephone number, and electronic mail address of the subscriber.

2. Identification of the material that has been removed or to which access has been disabled.

3. The location at which the material appeared before it was removed or access to it was disabled.

4. A statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material.

5. A statement that the subscriber agrees to be subject to orders of any court that has jurisdiction over the place where the subscriber's address is located, or, if that address is located outside of the Party's territory, any other court with jurisdiction over any place in the Party's territory in which the service provider may be found, and in which a copyright infringement suit could be brought with respect to the alleged infringement.

6. A statement that the subscriber will accept service of process in any such suit.

7. The signature of the subscriber.[14]

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an integral part of the Agreement."

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[13] All references to "subscriber" in this letter refer to the person whose material has been removed or disabled by a service provider as a result of an effective notice described in paragraph (a) of this letter.

[14] A signature transmitted as part of an electronic communication satisfies this requirement.

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this letter in reply shall constitute an integral part of the Agreement.

Sincerely,

Abdulla Hassan Saif

Washington, D.C.
September 14, 2004

H.E. Abdulla Hassan Saif
Minister of Finance and National Economy

Dear Minister Saif:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and the Kingdom of Bahrain in the course of negotiations regarding Chapter Fourteen (Intellectual Property Rights) of the Free Trade Agreement between our Governments signed this day:

> Concerning the manufacture of optical discs, Bahrain agrees to give effect to the following:
>
> (a) License:
>
> (i) No person shall manufacture in Bahrain optical discs, including master discs or stampers used in the manufacture of discs, unless that person holds a valid license to do so.
>
> (ii) No licensee shall manufacture optical discs in any location other than the licensed premises.
>
> (iii) In granting a license, the competent authority shall assign to the licensee a manufacturer's code (such as the source identification (SID) code currently deployed by optical media industries), and may impose such other conditions as it thinks fit.
>
> (b) Register: The competent authority shall establish and maintain a register of the licenses granted, which shall be available for public inspection.
>
> (c) Manufacturer's Code:
>
> (i) Every licensee shall ensure that each optical disc manufactured is marked with the manufacturer's code endorsed on that person's license.
>
> (ii) The standard for marking manufacturer's codes on optical discs shall include both a mould code and a mastering code. Every mould must be engraved with a mould code and every Laser Beam Recorder must be hardwired with a mastering code such that every master/stamper and every disc produced will bear markings identifying the source.

(d) Records: Every licensee shall maintain complete and accurate records of orders received, customers, suppliers, equipment, and discs manufactured. In addition, every licensee shall keep records on the quantity of optical disc grade polycarbonate received on the licensed premises, the quantity of such material being used for the manufacture of optical discs, the quality of such material being disposed of in other manners, and the manner of disposal.

(e) Inspections: The competent authority shall carry out regular inspections, without prior notice, to ensure compliance with the regulations and the conditions of the license, and shall be permitted to seize any items (including equipment) until it is determined if there is a breach of the regulations or the conditions of the license. Every licensee shall produce its records for and permit inspection by the competent authorities at any time.

(f) Exemplars of Discs: Every licensee shall provide exemplars of discs from each of its manufacturing lines to law-enforcement authorities and right-holder organizations, and permit inspection by right-holder organizations.

(g) Offenses: A person who contravenes the obligations of the regulation or breaches any condition of the license shall be liable for a fine or imprisonment, or both. Except for minor violations, all equipment seized shall be forfeited and any license granted shall be revoked.

(h) Licensing: Bahrain shall provide for a system of automatic licensing for the import into or the export from Bahrain of “stampers” and “masters” and manufacturing equipment used in connection with the production of optical discs.

(i) Unlawful Dealing in Discs: Bahrain shall not permit the sale, offer for sale, or distribution of any optical discs that do not bear unique identifiers as contemplated in subparagraph (c) above.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an integral part of the Agreement.

Sincerely,

Robert B. Zoellick

September 14, 2004

Washington, D.C.

The Honorable Robert B. Zoellick
United States Trade Representative

Dear Ambassador Zoellick:

I have the honor to confirm receipt of your letter of today's date, which reads as follows:

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Sincerely,

Abdulla Hassan Saif

September 14, 2004

Washington, D.C.

The Honorable Robert B. Zoellick
United States Trade Representative

Dear Ambassador Zoellick:

I have the honor to confirm the following understanding reached between the delegations of the Kingdom of Bahrain and the United States of America in the course of negotiations regarding Chapter Fourteen (Intellectual Property Rights) of the Agreement between our Governments signed this day:

> The obligations of Chapter Fourteen of the Agreement do not affect the ability of either Party to take necessary measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency.
>
> In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and public health (WT/L/540) and the WTO General Council Chairman's statement accompanying the Decision (JOB(03)/177, WT/GC/M/82) (collectively the "TRIPS/health solution"), Chapter Fourteen does not prevent the effective utilization of the TRIPS/health solution.
>
> With respect to the aforementioned matters, if an amendment of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights enters into force with respect to the Parties and a Party's application of a measure in conformity with that amendment violates Chapter Fourteen of the Agreement, our Governments shall immediately consult in order to adapt Chapter Fourteen as appropriate in the light of the amendment.

I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Abdulla Hassan Saif

Washington, D.C.
September 14, 2004

H.E. Abdulla Hassan Saif
Minister of Finance and National Economy

Dear Minister Saif:

I am pleased to receive you letter of today's date, which reads as follows:

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I have the honor to confirm that the understanding referred to in your letter is shared by my Government.

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Robert B. Zoellick