

CHAPTER 17

INTELLECTUAL PROPERTY

Section A General Provisions

Article 17.1 Definitions

For the purposes of this Chapter:

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

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

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

“covered subject matter” means each and all of the subject matter categories covered in Section H (Copyright and Related Rights), being works, performances, phonograms, and broadcasts;

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

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

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

“intellectual property” refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement. The protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention;

“Madrid Protocol” means the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* done at Madrid on 27 June 1989, as amended on 3 October 2006 and 12 November 2007;

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

“Nice Agreement” means the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* done at Nice on 15 June 1957, as revised at Geneva on 13 May 1977 and amended on 8 September 1979;

“Paris Convention” means the *Paris Convention for the Protection of Industrial Property* done at Paris on 20 March 1883, as revised at Stockholm on 14 July 1967 and amended on 28 September 1979;

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

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

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

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

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

“Singapore Treaty” means the *Singapore Treaty on the Law of Trade Marks* done at Singapore on 27 March 2006;

“trade secret” means information that:

- (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

- (b) has commercial value because it is secret; and
- (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

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

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

“WIPO” means the World Intellectual Property Organization;

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

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

Article 17.2

Objectives

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

Article 17.3

Principles

1. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter.
2. Appropriate measures, provided that they are consistent with the provisions of this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

Article 17.4

Understandings in Respect of this Chapter

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

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

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

Article 17.5 **Nature and Scope of Obligations**

1. The Parties affirm their existing rights and obligations with respect to each other under the TRIPS Agreement. This Chapter shall complement and further specify the rights and obligations of the Parties under the TRIPS Agreement and other international agreements in the field of intellectual property to which they are parties.
2. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

Article 17.6 **Understandings Regarding Certain Public Health Measures**

The Parties affirm their commitment to the Declaration on TRIPS and Public Health. In particular, the Parties have reached the understanding that the obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all. Each Party has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria, COVID-19, and other epidemics, can represent a national emergency or other circumstances of extreme urgency.

Article 17.7

National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals¹ of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection² of intellectual property rights, subject to the exceptions already provided for in, respectively, the Paris Convention, the Berne Convention, the Rome Convention, the WPPT, and the *Treaty on Intellectual Property in Respect of Integrated Circuits* adopted at Washington on 26 May 1989. In respect of performers, producers of phonograms, and broadcasting organisations, this obligation only applies in respect of the rights provided under this Agreement.³
2. Each Party may avail itself of the exceptions referred to under paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, only where those exceptions are:
 - (a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and
 - (b) not applied in a manner that would constitute a disguised restriction on trade.
3. Paragraph 1 shall not apply to procedures provided for in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 17.8

International Agreements

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

- (a) TRIPS Agreement;
- (b) Paris Convention;
- (c) Berne Convention;

¹ For the purposes of this Article, “nationals” has the same meaning as in the TRIPS Agreement.

² 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.

³ For greater certainty, this national treatment obligation applies to Article 17.45 (Broadcasting and Communication to the Public of Phonograms Published for Commercial Purposes) only to the extent that the other Party provides for the same type of right under paragraph 1 of that Article.

- (d) WCT;
- (e) WPPT;
- (f) Marrakesh Treaty;
- (g) Madrid Protocol;
- (h) Nice Agreement;
- (i) Singapore Treaty;
- (j) Budapest Treaty; and
- (k) PCT.

Article 17.9 Transparency

1. Each Party shall endeavour to publish online its laws, regulations, procedures, and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.
2. Each Party shall, subject to its law, endeavour to publish online information that it makes public concerning applications for trade marks, geographical indications, registered designs, patents, and plant variety rights.^{4, 5}
3. Each Party shall, subject to its law, publish online information that it makes public concerning registered or granted trade marks, geographical indications, designs, patents, and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights.⁶

Article 17.10 Application of Chapter to Existing Subject Matter and Prior Acts

1. Unless otherwise provided in this Chapter, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

⁴ For greater certainty, paragraphs 2 and 3 are without prejudice to a Party's obligations under Article 17.27 (Electronic Trade Marks System).

⁵ For greater certainty, paragraph 2 does not require a Party to publish online the entire dossier for the relevant application.

⁶ For greater certainty, paragraph 3 does not require a Party to publish online the entire dossier for the relevant registered or granted intellectual property right.

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

Article 17.11

Exhaustion of Intellectual Property Rights

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

Section B

Cooperation

Article 17.12

Contact Points

1. As of the date of entry into force of this Agreement, each Party shall provide the other Party with a contact point for communication on all matters covered by this Chapter.
2. Each Party shall promptly notify the other Party of any amendments to the details of their contact point.

Article 17.13

Cooperation and Dialogue

1. The Parties recognise the growing importance of the protection of intellectual property in further promoting trade and investment between them, and shall cooperate and engage in dialogue on the subject matter covered by this Chapter.⁷ This may include through appropriate coordination and exchange of information between their respective intellectual property offices, or other agencies or institutions, as determined by each Party. The areas of cooperation and dialogue shall include, at least:
 - (a) exchanging information relating to developments in the Parties' domestic and international intellectual property policy;

⁷ For greater certainty, the Parties may comply with this Article by cooperating under the auspices of the Working Group whose functions are set out in Article 17.14 (Intellectual Property Working Group).

- (b) intellectual property administration and registration systems (where the Parties have such systems in place);
 - (c) cooperation between their respective collective management organisations;
 - (d) intellectual property issues relevant to SMEs including using, protecting, and enforcing intellectual property rights;
 - (e) cooperation on public and business educational awareness campaigns on intellectual property rights;
 - (f) cooperation on intellectual property issues relevant to science, technology, and innovation activities, including in the areas of clean growth, low-carbon, and environmentally beneficial technologies and other climate friendly technologies; and
 - (g) best practices, projects, and programmes aimed at reducing intellectual property rights infringement, including in relation to:
 - (i) preventing exports of counterfeit goods, including with other countries;
 - (ii) sharing of experience of intellectual property rights enforcement between customs and law enforcement bodies;
 - (iii) public awareness campaigns on the impact of intellectual property infringement; and
 - (iv) voluntary stakeholder initiatives to reduce intellectual property infringement, including over the Internet and other marketplaces.
2. In addition, the Parties shall endeavour to cooperate in relation to activities for improving the international intellectual property regulatory framework, including by working together on relevant activities in international organisations including the WTO and the WIPO.

Article 17.14

Intellectual Property Working Group

1. The Intellectual Property Working Group established under Article 30.10 (Working Groups – Institutional Provisions) (“the Working Group”) shall be composed of representatives of each Party and with Māori in the case of New Zealand for functions under subparagraph 3(b). The Working Group may also invite experts to attend meetings and advise the Working Group on

any matter falling within its functions.⁸

2. The Working Group shall meet as often as necessary to carry out its functions set out under this Chapter and, in any event, within three months of a Party making a request for a meeting. The Working Group may meet physically or virtually, as agreed by the Parties. The Working Group shall make decisions by mutual agreement.
3. The Working Group shall:
 - (a) carry out the functions specified in Articles 17.33 (Consultations on Recognition and Protection of Geographical Indications) and 17.34 (Ongoing Review of this Section);
 - (b) carry out the functions specified in Article 17.20 (Section Review);
 - (c) carry out any functions as directed by the Joint Committee;
 - (d) monitor and consider matters relating to the implementation and operation of this Chapter; and
 - (e) report to the Joint Committee on the performance of its activities, including the outcome of any reviews of the Chapter or Sections thereof.
4. The Working Group may make recommendations or submit proposals for decisions to be adopted by the Joint Committee, including recommendations or proposals arising out of any review of this Chapter or Sections thereof.

Article 17.15

Patent Cooperation and Work Sharing

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems as well as simplifying and streamlining the procedures and processes of their respective patent offices to the benefit of all users of the patent system and the public as a whole.
2. Further to paragraph 1, the Parties shall endeavour to cooperate through their respective patent offices to facilitate the sharing and use of search and examination work of the Parties. This may include:
 - (a) making search and examination results available to the patent offices

⁸ Experts may include, among others, experts from the private sector and appropriate Māori representatives.

of the other Party;⁹ and

- (b) exchanging information on quality assurance systems and quality standards relating to patent examination.
3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to cooperate to reduce differences in the procedures and processes of their respective patent offices.

Article 17.16

Cooperation on Request

Cooperation activities undertaken under this Chapter are subject to the availability of resources, and on request, and on terms and conditions mutually decided upon between the Parties. The Parties affirm that cooperation under this Section is additional to and without prejudice to other past, ongoing, and future cooperation activities, both bilateral and multilateral, between the Parties, including between their respective intellectual property offices.

Section C

Intellectual Property and Issues Related to Genetic Resources, Traditional Knowledge, and Traditional Cultural Expressions

Article 17.17

Cooperation

1. The Parties recognise the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.
2. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, with the inclusive participation of Māori, if such participation is relevant and practicable, to enhance the understanding of:
 - (a) issues connected with traditional knowledge associated with genetic resources, and genetic resources; and
 - (b) matters of interest to Māori relating to intellectual property, and issues relating to genetic resources, traditional knowledge, and traditional cultural expressions.

⁹ The Parties recognise the importance of multilateral efforts to promote the sharing and use of search and examination results with a view to improving the quality of search and examination processes and to reducing the costs for both applicants and patent offices.

Article 17.18
Patent Examination and Traditional Knowledge Associated with Genetic Resources

The Parties shall endeavour to pursue quality patent examination, which may include:

- (a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;
- (b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;
- (c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources; and
- (d) cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.

Article 17.19
WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

1. The Parties shall, without prejudice to their respective positions, work under the auspices of WIPO to promote a multilateral outcome at the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“WIPO IGC”).
2. Relevant to promoting a multilateral outcome at the WIPO IGC the Parties shall, to the extent appropriate, cooperate through their respective relevant agencies and institutions and, where relevant and practicable, with the inclusive participation of Māori, by:
 - (a) sharing information with each other; and
 - (b) in response to any reasonable request, engaging actively in dialogue.

Article 17.20
Section Review

1. The Parties affirm the importance of the WIPO IGC as a forum for multilateral cooperation.
2. If an international instrument is agreed at the WIPO IGC, the Parties shall, under the auspices of the Working Group:
 - (a) conduct consultations under this Article;
 - (b) enter into those consultations as soon as reasonably practicable and, in any event, no later than two years after the date of entry into force of that international instrument;
 - (c) agree a timetable at an initial meeting held within the time frame specified in subparagraph (b);
 - (d) review this Section with a view to considering whether to amend this Agreement in accordance with the international instrument; and
 - (e) endeavour to complete a review under this Article in a timely manner.
3. If this Agreement does not enter into force before the date the Parties would otherwise have been required to enter into consultations under subparagraph 2(b), the Parties shall, under the auspices of the Working Group, enter into consultations as soon as reasonably practicable after the date of entry into force of this Agreement and, in any event, no later than four months after the date of entry into force of this Agreement.
4. If the criteria requiring consultations under paragraph 2 have not been met within two years of the date of entry into force of this Agreement, the Parties shall, without prejudice to the possibility of a review under paragraph 2, review this Section with a view to considering provisions on genetic resources, traditional knowledge, and traditional cultural expressions. The Parties shall, under the auspices of the Working Group:
 - (a) enter into consultations as soon as reasonably practicable and, in any event, no later than four months after the expiry of the time period referred to in this paragraph;
 - (b) consider the Parties' interests on genetic resources, traditional knowledge, and traditional cultural expressions; and
 - (c) endeavour to complete a review under this Article in a timely manner.

Section D Trade Marks

Article 17.21 Types of Signs Registrable as Trade Marks

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

Article 17.22 Rights Conferred

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

Article 17.23 Exceptions

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

Article 17.24 Well-Known Trade Marks

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

Article 17.25
Procedural Aspects of Examination, Opposition, and Cancellation

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

- (a) communicating to the applicant in writing, preferably by electronic means, the reasons for any refusal to register a trade mark;
- (b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trade mark;
- (c) providing an opportunity to oppose an application for the registration of a trade mark and an opportunity to seek cancellation¹⁰ of a trade mark registration through, at a minimum, administrative procedures; and
- (d) requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which are preferably provided by electronic means.

Article 17.26
Bad Faith Applications

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

Article 17.27
Electronic Trade Marks Systems

Each Party shall provide a:

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

¹⁰ For greater certainty, cancellation for the purposes of this Section may be implemented through an invalidation or revocation proceeding.

Article 17.28
Term of Protection for Trade Marks

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

Article 17.29
Efforts toward the Harmonisation of Trade Mark Systems

The Parties recognise the importance of reducing differences in law and practice between the Parties' respective systems for the protection of trade marks. Each Party shall endeavour to cooperate in international fora, including WIPO, where appropriate and as resources permit, to harmonise standards of protection, and procedures, for the registration of trade marks.

Article 17.30
Domain Names

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

Section E
Geographical Indications

Article 17.31
Scope of Application of this Section

This Section shall apply to the recognition and protection of geographical indications in the territories of the Parties for wines, spirits, agricultural products, and foodstuffs.

Article 17.32
Recognition and Protection of Geographical Indications

The Parties recognise that geographical indications may be protected through a trade mark or sui generis system or other legal means.

Article 17.33
Consultations on Recognition and Protection of Geographical Indications

1. The Parties shall enter into consultations to review this Section if, after this Agreement has been signed by the Parties:
 - (a) New Zealand signs an international agreement with a non-party that includes obligations requiring New Zealand to adopt any substantive change to New Zealand's geographical indications regime; or
 - (b) New Zealand adopts any substantive change to New Zealand's geographical indications regime for a reason other than that in subparagraph (a).
2. For the purposes of this Article, a substantive change to New Zealand's geographical indications regime includes:
 - (a) the introduction of a sui generis scheme for the registration and protection of geographical indications for agricultural products or foodstuffs; or
 - (b) any substantive change to the system or standard of protection¹¹ provided under New Zealand's sui generis scheme for the registration and protection of geographical indications for wine and spirits in effect on the date this Agreement is signed by both Parties.
3. New Zealand shall, through the contact point referred to in Article 17.12 (Contact Points):
 - (a) promptly notify the United Kingdom of the signature of an international agreement as described in subparagraph 1(a) or the date of adoption of a domestic change as described in subparagraph 1(b); and
 - (b) provide any relevant information about the substantive change to New Zealand's geographical indications regime as described in subparagraph 1(a) or subparagraph 1(b).
4. If the Parties are required to enter consultations under paragraph 1, the Parties shall:
 - (a) conduct those consultations under the auspices of the Working Group;

¹¹ For the purposes of this Section, "system or standard of protection" shall include, but not be limited to, matters affecting the availability, acquisition, scope, maintenance, use, and enforcement of geographical indications.

- (b) enter into those consultations as soon as reasonably practicable after the signature of an international agreement as described in subparagraph 1(a) or the date of adoption of a domestic change as described in subparagraph 1(b) and, in any event, no later than four months after the date of that event;
 - (c) agree a timetable at an initial meeting held within the time frame specified in subparagraph (b) or paragraph 5;
 - (d) as part of those consultations, review this Section with a view to amending this Agreement so that no less favourable treatment is applied under this Section in relation to the standard of protection of geographical indications than the standard applied under:¹²
 - (i) the international agreement referred to in subparagraph 1(a); or
 - (ii) the domestic change referred to in subparagraph 1(b); and
 - (e) use reasonable endeavours to complete a review under this Article in a timely manner.
5. If this Agreement has not entered into force by the date the Parties would otherwise have been required to enter into consultations under subparagraph 4(b), the Parties shall enter into consultations as soon as reasonably practicable after the date of entry into force of this Agreement and, in any event, no later than four months after the date of entry into force of this Agreement.
6. If the Parties agree to amend this Section pursuant to a review under this Article conducted as part of consultations under:
- (a) subparagraph 1(a), no further review shall be required under this Article or Article 17.34 (Alternative Review of this Section), unless the Parties agree otherwise; or
 - (b) subparagraph 1(b), no further review shall be required under Article 17.34 (Alternative Review of this Section), unless the Parties agree otherwise.

¹² Nothing in this Article requires New Zealand to agree to amendments to this Section prior to implementing the applicable substantive domestic change to New Zealand's geographical indications regime.

Article 17.34
Alternative Review of this Section

1. Subject to paragraph 6 of Article 17.33 (Consultations on Recognition and Protection of Geographical Indications), two years after the date of entry into force of this Agreement, the Parties shall enter into consultations to review this Section with a view to considering further provisions governing the recognition and protection of geographical indications.
2. If the Parties are required to enter consultations under paragraph 1, the Parties shall:
 - (a) conduct the review under the auspices of the Working Group;
 - (b) enter into consultations as soon as reasonably practicable and, in any event, no later than four months after the expiry of the time period in paragraph 1;
 - (c) consider the Parties' interests and sensitivities concerning the recognition and protection of geographical indications; and
 - (d) use reasonable endeavours to complete a review under this Article in a timely manner.
3. If the Parties do not agree to amend this Section following a review, the Parties shall conduct further reviews if agreed.¹³
4. A review of this Section conducted under this Article shall be undertaken without prejudice to the possibility of a consultation or review under Article 17.33 (Consultations on Recognition and Protection of Geographical Indications).
5. If, pursuant to a review of this Section under this Article, the Parties agree to amend this Section, no further review shall be required under this Article, unless the Parties agree otherwise.

Article 17.35
Lists of Geographical Indications

1. If, pursuant to a review of this Section under Article 17.33 (Consultations on Recognition and Protection of Geographical Indications) or Article 17.34 (Ongoing Review of this Section), the Parties agree to amend this Section to permit specific geographical indications to be identified and protected under this Agreement, without limiting what may otherwise be agreed, and where

¹³ The Parties acknowledge that, where a general review of the Agreement under Article 17.3 (General Review) starts within 12 months of the conclusion of a review of this Section under this Article, the Parties shall not normally consider issues arising relating to this Section as part of that general review.

a Party intends to seek protection for a geographical indication in the territory of the other Party:

- (a) that Party (Party A) shall notify the contact point nominated by the other Party (Party B), referred to in Article 17.12 (Contact Points), of a list of geographical indications protected in Party A's territory for which it intends to seek protection in the territory of Party B under this Agreement; and
 - (b) Party B shall examine and publish for opposition the notified geographical indications under its domestic requirements as soon as reasonably practicable following receipt of Party A's list.
2. As part of any amendments made to this Section, the Parties shall ensure that an Annex is added to this Agreement that lists the geographical indications of each Party that are protected in the other Party under this Agreement, and that geographical indications that have completed and passed an examination and opposition procedure in the other Party, as referred to in subparagraph 1(b), can be added to that Annex without undue delay.

Section F

Registered Designs

Article 17.36

Protection of Registered Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. This protection shall be provided by registration and shall confer an exclusive right upon their holder in accordance with the provisions of this Article.
2. Each Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.
3. Each Party shall ensure that an owner of a protected industrial design has at least the right to prevent third parties not having the owner's consent from making, selling, or importing articles bearing or embodying a copy, or substantial copy, of the protected design, when such acts are undertaken for commercial purposes.

Article 17.37
Duration of Protection

Each Party shall ensure that the total term of protection available for registered designs is no less than 15 years.

Article 17.38
Electronic Industrial Design System

Each Party shall provide a:

- (a) system for the electronic application for the registration of industrial designs; and
- (b) publicly available electronic information system, which must include an online database of registered industrial designs.

Article 17.39
Relationship to Copyright

Each Party may provide that the subject matter of a design, including the unregistered appearance of a product, may be protected under copyright law if the conditions for such protection are met. The extent to which, and the conditions under which, such protection is conferred, including the level of originality required, shall be determined by each Party.

Article 17.40
International Registration of Industrial Designs

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

Section G
Copyright and Related Rights

Article 17.41
Authors

Each Party shall provide for authors the exclusive right to authorise or prohibit:

- (a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their works;

- (b) any form of distribution to the public, by sale or other transfer of ownership, of the original and copies of their works;
- (c) the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them;¹⁴ and
- (d) the commercial rental to the public of originals or copies of their works comprising at least sound recordings, computer programs,¹⁵ and films.

Article 17.42 **Performers**

Each Party shall provide for performers the exclusive right to authorise or prohibit:

- (a) the fixation of their unfixed performances;
- (b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their performances fixed in phonograms;
- (c) any form of distribution to the public, by sale or other transfer of ownership, of their performances fixed in phonograms;
- (d) the making available to the public of their performances fixed in phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (e) the broadcasting and the communication to the public of their unfixed performances, except where the performance is itself already a broadcast performance; and
- (f) the commercial rental to the public of their performances fixed in phonograms.

¹⁴ The Parties understand 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.

¹⁵ A Party may exclude computer programs where the program itself is not the essential object of the rental.

Article 17.43
Producers of Phonograms

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

- (a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of their phonograms;
- (b) any form of distribution to the public, by sale or other transfer of ownership, of their phonograms;
- (c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and
- (d) the commercial rental of their phonograms to the public.

Article 17.44
Broadcasting Organisations

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

- (a) the fixation of their broadcasts;
- (b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts;
- (c) the making available to the public of fixations of their broadcasts, in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (d) the distribution to the public, by sale or otherwise, of fixations of their broadcasts;
- (e) the rebroadcasting of their broadcasts; and
- (f) the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

Article 17.45
Broadcasting and Communication to the Public of Phonograms Published for Commercial Purposes¹⁶

1. With respect to the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public, each Party shall provide for performers and producers of those phonograms:
 - (a) a right to a single equitable remuneration consistent with Article 15(1), Article 15(2), and Article 15(4) of the WPPT; or
 - (b) the exclusive right to authorise or prohibit such use.
2. The Parties shall discuss measures to ensure adequate remuneration for performers and producers of phonograms when phonograms published for commercial purposes are used for broadcasting or for any communication to the public.

Article 17.46
Artist's Resale Right

1. Each Party shall provide, for the benefit of the author of an original work of art, a resale right that is defined as an inalienable right, which cannot be waived, even in advance, and the right to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.
2. Each Party shall provide that the right referred to in paragraph 1 shall apply to all acts of resale involving any sellers, buyers, or intermediaries acting in the course of business of dealing in works of art, such as salesrooms, art galleries, and, in general, any dealers in works of art.
3. Each Party may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount specified in a Party's law.
4. Each Party may determine the procedure for collection of the royalty, its amount and the criteria for the works, resales and authors eligible to receive the royalty under its domestic law.
5. Each Party shall provide the right referred to in this Article for authors of the other Party on a reciprocal basis.

¹⁶ For the purposes of this Article, phonograms made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they had been published for commercial purposes.

6. Each Party shall implement its obligations under this Article no later than two years after the date of entry into force of this Agreement.

Article 17.47 **Limitations and Exceptions**

1. Each Party may provide for limitations or exceptions to the rights covered in this Section only in certain special cases that do not conflict with a normal exploitation of covered subject matter and do not unreasonably prejudice the legitimate interests of the right holder.
2. This Article does not reduce or extend the scope of applicability of the limitations and exceptions to any rights permitted by international agreements such as the TRIPS Agreement, the Berne Convention, the Rome Convention, the WCT, or the WPPT.

Article 17.48 **Term of Protection**

1. Each Party shall provide that the rights of an author of a work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after the author's death.
2. In the case of a work of joint authorship, each Party shall provide that the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. Notwithstanding paragraphs 1 and 2, where the term of protection of a work is not determined by reference to the life of a natural person, each Party shall provide that the term of protection shall expire 70 years after the creation of the work or, if lawfully made available to the public within 70 years from creation, 70 years after the first such making available.
4. Each Party shall provide that the rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.
5. Each Party shall provide that the rights of performers for their performances otherwise than in phonograms shall expire 50 years after the date of the fixation of the performance or, if lawfully made available to the public during this time, 50 years after the first such making available.
6. Each Party shall provide that the rights of performers for their performances in phonograms shall expire 50 years after the date of fixation of the

performance or, if lawfully made available to the public during this time, 70 years after the first such making available.

7. Each Party shall provide that the rights of producers of phonograms shall expire 50 years after the fixation being made or, if lawfully made available to the public during this time, 70 years after the first such making available. Each Party may adopt effective measures to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.
8. Each Party shall provide that the terms laid down in this Article shall be calculated from 1 January of the year following the event.
9. Each Party may provide for longer terms of protection than those provided for in this Article.
10. The obligations in this Article shall only commence applying 15 years after the date of entry into force of this Agreement.

Article 17.49 **Collective Management Organisations**

1. The Parties shall endeavour to promote cooperation between the collective management organisations established in their respective territories, for the purpose of fostering the availability of works and other protected subject matter in the territories of the Parties, and the transfer of rights revenue between the respective collective management organisations for the use of such works or other protected subject matter.
2. The Parties shall endeavour to promote the transparency of collective management organisations established in their respective territories, particularly in relation to the collection of rights revenues, the deductions they make from the rights revenue collected, their distribution policies, and the repertoire they represent.
3. Where a collective management organisation established in the territory of a Party has entered into a representation agreement with a collective management organisation established in the territory of the other Party, the Parties recognise the importance of non-discriminatory treatment by their respective collective management organisation of any right holder, whose rights this organisation manages under the representation agreement.
4. Where a collective management organisation represents a collective management organisation established in the territory of the other Party by way of a representation agreement, the Parties recognise the importance of:

- (a) accurate, regular, and diligent payment of amounts owed to the represented collective management organisation by the representing collective management organisation; and
- (b) the provision of information on the amount of rights revenue collected on the represented organisation's behalf and any deductions made to this rights revenue by the representing collective management organisation.

Article 17.50

Technological Protection Measures

1. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers, producers of phonograms, or broadcasting organisations in connection with the exercise of their rights under this Section and that restrict acts, in respect of the covered subject matter, which are not authorised by the authors, the performers, the producers of phonograms, or the broadcasting organisations concerned or permitted by the domestic law of that Party.
2. A Party may adopt or maintain appropriate measures, as necessary, to ensure that the adequate legal protection and effective legal remedies under paragraph 1 do not prevent beneficiaries of exceptions or limitations provided for in accordance with Article 17.47 (Limitations and Exceptions) from enjoying such exceptions or limitations.

Article 17.51

Rights Management Information

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

are without prejudice to the limitations and exceptions to infringement of copyright and related rights under a Party's law.

3. For the purposes of this Article, "rights management information" means:
 - (a) information that identifies covered subject matter, the author, performer, producer of a phonogram, or any other right holder with respect to covered subject matter;
 - (b) information about the terms and conditions of use of covered subject matter; or
 - (c) any numbers or codes that represent the information described in subparagraph (a) or subparagraph (b), when any of these items of information is attached to covered subject matter, or appears in connection with the communication or making available of covered subject matter to the public.

Section H Patents

Article 17.52 Rights Conferred

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

Article 17.53 Patentable Subject Matter

1. Subject to paragraphs 2 and 3, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided

that the invention is new, involves any inventive step, and is capable of industrial application.¹⁷

2. A Party may exclude from patentability inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal, or plant life or health, or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law.
3. A Party may also exclude from patentability:
 - (a) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; and
 - (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, each Party shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof.

Article 17.54 Exceptions

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

Article 17.55 Regulatory Review Exception

Without prejudice to the scope of, and consistent with, Article 17.54 (Exceptions), each Party shall adopt or maintain a regulatory review exception for pharmaceutical products¹⁸ that permits a third person to do an act that would otherwise infringe a patent in the territory of that Party, if the act is done for purposes related to generating information to meet requirements for marketing approval of a pharmaceutical product in that Party, or another country, or both.

¹⁷ For the purposes of this Article, the terms “inventive step” and “capable of industrial application” may be deemed by a Party to be synonymous with the terms “non-obvious” and “useful” respectively.

¹⁸ For greater certainty, this Article does not limit a Party’s ability to adopt or maintain regulatory review exceptions for any other patented inventions.

Article 17.56
Other Use Without Authorisation of the Right Holder

The Parties understand that nothing in this Chapter limits a Party's rights and obligations under Article 31 or Article 31bis of the TRIPS Agreement.

Article 17.57
Amendments, Corrections, and Observations

Neither Party shall revoke or invalidate a patent, either totally or in part, without the patent owner being given the opportunity to make observations on the intended revocation or invalidation, and to make amendments and corrections where permitted under a Party's law within a reasonable time limit.

Article 17.58
Publication of Patent Applications

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

Article 17.59
Information Relating to Published Patent Applications and Granted Patents

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

- (a) search and examination results, including details of, or information related to, relevant prior art searches;
- (b) as appropriate, non-confidential communications from applicants;
and

- (c) patent and non-patent related literature citations submitted by applicants and relevant third parties.

Article 17.60
Conditions on Patent Applicants

1. Each Party shall require an applicant for a patent to disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.
2. A Party may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

Section I
Undisclosed Test or Other Data

Article 17.61
Protection of Undisclosed Test or Other Data for Agricultural Chemical Products

1. If a Party requires, as a condition for approving the marketing of a new agricultural chemical product, the submission of undisclosed test or other data, that Party shall ensure that, in accordance with its law, either:
 - (a) third persons are not permitted, without the consent of the person that previously submitted such information, to market the same or a similar¹⁹ product on the basis of that information, or the marketing approval granted to the person that submitted that information, for a period of at least 10 years from the date of marketing approval of the previously approved agricultural chemical product; or
 - (b) applicants for marketing approval are generally required to submit a full set of test data, even in cases where there was a prior application for the same product, for a period of at least 10 years, from the date of approval of a prior application.²⁰

¹⁹ For greater certainty, for the purposes of this Section, an agricultural chemical product is "similar" to a previously approved agricultural chemical product if the marketing approval, or, in the alternative, the applicant's request for such approval, of that similar agricultural chemical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved agricultural chemical product, or the prior approval of that previously approved product.

²⁰ For greater certainty, nothing in this Article prevents a Party from applying reasonable exceptions in its law in order to protect animal welfare or prevent unnecessary animal testing.

2. For the purposes of this Article, a new agricultural chemical product is a product that contains²¹ a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

Article 17.62

Protection of Undisclosed Test or Other Data for Pharmaceutical Products

1. If a Party requires, as a condition for approving the marketing of a new pharmaceutical product, the submission of undisclosed test or other data, that Party shall not permit third persons, without the consent of the person that previously submitted that information, to place on the market the same or a similar²² product on the basis of:
 - (a) that information; or
 - (b) the marketing approval granted to the person that submitted that information, for at least five years from the date of marketing approval of the previously approved pharmaceutical product; such date to be determined in accordance with each Party's law.
2. For the purposes of this Article, a new pharmaceutical product means a pharmaceutical product that does not contain²³ a chemical entity or biologic that has been previously approved in that Party.

Section J

Trade Secrets

Article 17.63

Trade Secrets

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention, each Party shall provide that trade secret holders shall have the possibility of preventing their trade secrets from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices.

²¹ For the purposes of this Article, a Party may treat "contain" as meaning utilise. For greater certainty, for the purposes of this Article, a Party may treat "utilise" as requiring the new chemical entity to be primarily responsible for the product's intended effect.

²² For greater certainty, for the purposes of this Section, a pharmaceutical product is "similar" to a previously approved pharmaceutical product if the marketing approval, or, in the alternative, the applicant's request for that approval, of that similar pharmaceutical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved pharmaceutical product, or the prior approval of that previously approved product.

²³ For the purposes of this Article, a Party may treat "contain" as meaning utilise.

2. Subject to paragraphs 3 and 4, each Party shall provide that at least each of the following shall be considered contrary to honest commercial practices:
 - (a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances, or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;
 - (b) the use or disclosure of a trade secret whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:
 - (i) having acquired the trade secret in a manner referred to in subparagraph (a);
 - (ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or
 - (iii) being in breach of a contractual or any other duty to limit the use of the trade secret; and
 - (c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use, or disclosure, knew or ought, under the circumstances, to have known that the trade secret had been obtained directly or indirectly from another person who was disclosing the trade secret in a manner referred to in subparagraph (b).
3. Nothing in this subsection shall be understood as requiring a Party to consider any of the following conduct as contrary to honest commercial practices:
 - (a) independent discovery or creation;
 - (b) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;
 - (c) acquisition, use, or disclosure of information as required or permitted by the Party's law;
 - (d) in the exercise of the right of workers or workers' representatives to information and consultation in accordance with the Party's law; or
 - (e) use by employees of their experience and skills honestly acquired in the normal course of their employment.

4. Each Party may provide for limited exceptions and limitations to the rights of trade secret holders in circumstances where the legitimate interests of third parties, the general public, or the Party outweigh the legitimate interests of trade secret holders, such as in the following cases:
 - (a) for exercising the right to freedom of expression and information, including respect for the freedom and pluralism of the media;
 - (b) for revealing misconduct, wrongdoing, or illegal activity, provided that the person acquiring, using, and disclosing the trade secret did so for the purpose of protecting the general public interest; and
 - (c) disclosure by workers to their representatives as part of the legitimate exercise by those representatives of their functions in accordance with the Party's law, provided that such disclosure was necessary for that exercise.

Section K Enforcement

Sub-Section K.1 Enforcement – General Obligations

Article 17.64 General Obligations

1. Each Party shall provide for the measures, procedures, and remedies set out in this Section in respect of the enforcement of intellectual property rights:
 - (a) measures, procedures, and remedies must be:
 - (i) fair, equitable, and effective;
 - (ii) applied in such a manner as to avoid the creation of barriers to legitimate trade, including electronic commerce, and to provide for safeguards against their abuse; and
 - (iii) be implemented in a manner consistent with the Party's laws, including laws concerning freedom of expression, fair process, and the right to privacy;
 - (b) measures and procedures must not be unnecessarily complicated or costly, entail unreasonable time-limits, or give rise to unwarranted delays; and

- (c) remedies must be dissuasive and proportionate, taking into account the seriousness of the infringement and the interests of third parties.
- 2. The Parties recognise the importance of ensuring that right holders²⁴ and alleged infringers have access to justice.
- 3. For the purposes of enforcing intellectual property rights and defending claims of infringement of intellectual property rights, each Party shall:
 - (a) have in place an effective judicial system;
 - (b) permit the use of alternative dispute resolution mechanisms; and
 - (c) endeavour to promote alternative dispute resolution.
- 4. This Section does not create any obligation:
 - (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of each Party to enforce its law in general; or
 - (b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of law in general.

Sub-Section K.2 Enforcement – Civil Remedies

Article 17.65 Entitled Applicants

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

Article 17.66 Provisional Measures for Preserving Evidence

1. Each Party shall provide that its judicial authorities may order prompt and effective provisional measures to preserve relevant evidence in relation to an alleged infringement, subject to the protection of confidential information.

²⁴ For greater certainty, references in this Section to a right holder shall include a trade secret holder; and do not limit the persons a Party may permit to enforce intellectual property rights, in accordance with its law.

2. Each Party shall provide that its judicial authorities may adopt provisional measures, where appropriate, without the other party having been heard, in particular if any delay is likely to cause irreparable harm to the right holder or if there is a demonstrable risk of evidence being destroyed. Each Party may provide that such measures include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and the materials and implements used in the production or distribution of these goods and related documents.

Article 17.67 **Provisional and Precautionary Measures**

1. Each Party shall provide that its judicial authorities may, on request of the applicant:
 - (a) order against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, as appropriate, to a recurring penalty payment where provided for by its law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder;
 - (b) order against an intermediary whose services are being used by an alleged infringer of intellectual property rights an interlocutory injunction for the same purpose and under the same conditions as apply under subparagraph (a); and
 - (c) order the seizure or delivery up of goods suspected of infringing rights in a trade mark, copyright or related right or, where a Party's law allows, any other intellectual property right.
2. In the case of an alleged infringement committed on a commercial scale, each Party shall provide that if the applicant demonstrates circumstances likely to endanger the recovery of damages, its judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of the alleged infringer's bank accounts and other assets.

Article 17.68 **Safeguards**

1. Each Party shall provide that its judicial authorities have the authority to require the applicant for measures provided for in Article 17.66 (Provisional

Measures for Preserving Evidence) or Article 17.67 (Provisional and Precautionary Measures) to provide:

- (a) reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that the infringement is imminent; and
 - (b) security or equivalent assurance set at a level:
 - (i) that is sufficient to protect the person against whom a measure is sought and to prevent abuse; and
 - (ii) that shall not unreasonably deter recourse to those procedures.
2. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of an intellectual property right, its judicial or other authorities have the authority to:
- (a) order a party, at whose request a measure was taken and who has abused the enforcement proceeding, to adequately compensate a person wrongly enjoined or restrained for injury suffered because of that abuse;
 - (b) order a party to pay the defendant's expenses, which may include appropriate attorneys' fees; and
 - (c) impose sanctions on a party to the proceedings, counsel, experts, or other persons subject to the court's jurisdiction for violation of judicial orders concerning the protection of confidential information produced or exchanged in that proceeding.

Article 17.69 **Right to Information**

1. Each Party shall provide that, in the context of civil proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order a person specified in paragraph 2 to provide relevant information in that person's control or possession on the origin and distribution networks of the goods or services that infringe or allegedly infringe an intellectual property right.
2. An order described in paragraph 1 shall be available against:
- (a) a person who has infringed, or is alleged to have infringed, an intellectual property right; and

- (b) any other person who was:
 - (i) found in possession of the infringing, or allegedly infringing, goods on a commercial scale;
 - (ii) found to be using the infringing, or allegedly infringing, services on a commercial scale;
 - (iii) found to be providing, on a commercial scale, services used in the infringing, or allegedly infringing, activities; or
 - (iv) indicated by the person referred to in subparagraph (b)(i), subparagraph (b)(ii), or subparagraph (b)(iii) as being involved in the production, manufacture, or distribution of the goods, or the provision of the services.
- 3. The information referred to in paragraph 1 may include:
 - (a) the names and addresses of the producers, manufacturers, distributors, suppliers, and other previous holders of the goods or services, as well as the intended wholesalers and retailers; or
 - (b) information on the quantities produced, manufactured, delivered, received, or ordered, as well as the price obtained for the goods or services in question.
- 4. This Article shall apply without prejudice to other provisions in a Party's law that:
 - (a) permit the competent authorities or order the infringer or alleged infringer to provide additional information;
 - (b) govern the use in civil or criminal proceedings of the information communicated under this Article;
 - (c) govern responsibility for the misuse of the right of information;
 - (d) afford an opportunity for refusing to provide information where doing so would amount to an admission of a person's participation, or that of their close relatives, in an infringement of an intellectual property right;
 - (e) govern the protection of confidentiality of information sources;
 - (f) govern personal data; or
 - (g) govern privilege.

Article 17.70

Injunctions

1. Each Party shall provide that, if its judicial authority has found an infringement of an intellectual property right, the authority may grant an injunction aimed at prohibiting the continuation of the infringement.
2. The injunction provided for in paragraph 1 shall be available against:
 - (a) the infringer; or
 - (b) an intermediary whose services are used by an infringer to infringe an intellectual property right.

Article 17.71

Corrective Measures

1. Each Party shall provide that, on request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, its judicial authorities may order the definitive removal from the channels of commerce, or the destruction of goods that were found to be infringing an intellectual property right. Each Party shall provide that its judicial authorities may also order, as appropriate, the destruction of materials and implements predominantly used in the creation or manufacture of those goods.
2. Each Party shall provide that its judicial authorities may order the measures referred to in paragraph 1 to be carried out at the expense of the infringer.

Article 17.72

Damages

1. Each Party shall provide that, on application of an injured party, its judicial authorities may order an infringer, who knowingly or with reasonable grounds to know, engaged in an infringing activity, to pay the right holder adequate compensation for the injury the right holder has suffered as a result of the infringement.
2. A Party may provide that its judicial authorities have the authority to order recovery of profits even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 17.73
Costs

Each Party shall provide that its judicial authorities may order, in accordance with its law, that reasonable and proportionate legal costs and other expenses incurred by the successful party in legal proceedings concerning the infringement of intellectual property rights shall be borne by the unsuccessful party.

Sub-Section K.3
Enforcement – Border Measures

Article 17.74
Border Measures

1. Each Party:
 - (a) shall provide for applications and procedures to suspend the release of, or to detain, suspected goods under customs control; and
 - (b) may provide for applications in respect of other goods that are suspected of infringing intellectual property rights.
2. For the purposes of this Article:
 - (a) “competent authorities” may include the appropriate judicial, administrative, or law enforcement authorities under a Party’s law; and
 - (b) “suspected goods” means goods that are suspected of infringing a trade mark or copyright under the law of the Party providing for applications and procedures under paragraph 1.
3. With respect to the initiation of the procedures provided for in paragraph 1 by a right holder, each Party shall provide that the relevant right holder is required:
 - (a) to provide adequate evidence to satisfy the competent authorities that, under its law, there is *prima facie* an infringement of the right holder’s intellectual property right; and
 - (b) to supply sufficient information that may reasonably be expected to be within the right holder’s knowledge to make the suspected goods reasonably recognisable by its competent authorities.

4. A Party may provide that, if its competent authorities have detained or suspended the release of suspected goods, those authorities may inform the right holder of the names and addresses of the consignor, exporter, consignee, or importer; a description of the goods; the quantity of the goods; and, if known, the country of origin of the goods. This paragraph is without prejudice to a Party's law pertaining to privacy or confidentiality.
5. Each Party shall provide that its competent authorities may initiate border measures *ex officio*, without the need for a formal complaint from a third party or right holder, with respect to suspected goods under customs control that are imported or destined for export. Each Party shall provide for its customs authorities to use risk management to identify suspected goods, which may include random selection.
6. Each Party shall ensure that its competent authorities decide about granting or recording applications to suspend the release of suspected goods, within a reasonable period of time after the initiation of procedures described in paragraph 1.
7. Each Party shall adopt and maintain procedures under which its competent authorities may determine, within a reasonable period after initiation of procedures described in paragraph 1, whether suspected goods infringe an intellectual property right.
8. Each Party shall provide that its competent authorities have the authority to order the destruction or disposal of suspected goods under customs control following a determination that the goods are infringing an intellectual property right. In cases in which the goods are not destroyed, each Party shall provide that, except in exceptional circumstances, the goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. With regard to counterfeit trade mark goods, the simple removal of the trade mark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.
9. Each Party may provide that, if requested by the customs authorities, the holder of the granted or recorded application shall be obliged to reimburse the costs incurred by the customs authorities, or other parties acting on behalf of customs authorities, including storage, handling, and any costs relating to the destruction or disposal of the goods.
10. Each Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.
11. It is understood that there shall be no obligation to apply the procedures described in this Article to imports of goods put on the market in another

country by, or with the consent of, the right holder,²⁵ or to goods in transit.

Sub-Section K.4

Enforcement – Criminal Remedies

Article 17.75

Criminal Offences

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trade mark counterfeiting or copyright or related rights piracy on a commercial scale. For the purposes of this Article, the term “on a commercial scale” includes at least:
 - (a) acts carried out for commercial advantage or financial gain; and
 - (b) significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.²⁶
2. Each Party shall treat wilful importation or exportation of counterfeit trade mark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties.²⁷
3. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation²⁸ and domestic use, in the course of trade and on a commercial scale, of a label or packaging:
 - (a) to which a trade mark has been applied without authorisation that is identical to, or cannot be distinguished from, a trade mark registered in its territory; and
 - (b) that is intended to be used in the course of trade on goods that are identical to goods for which that trade mark is registered.

²⁵ For greater certainty, the consent of the right holder to their goods being imports of goods put on the market in another country may be express or implicit.

²⁶ A Party may comply with this subparagraph by addressing such significant acts under its criminal procedures and penalties for non-authorised uses of protected works, performances, and phonograms in its law. A Party may also provide that the volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of the copyright or related right holder in relation to the marketplace.

²⁷ A Party may comply with this paragraph by providing that distribution or sale of counterfeit trade mark goods or pirated copyright goods on a commercial scale is an unlawful activity subject to criminal penalties.

²⁸ A Party may comply with the obligation relating to importation of labels or packaging through its laws concerning distribution.

4. With respect to the offences specified in this Article,²⁹ each Party shall provide that criminal liability for aiding and abetting is available under its law.

Article 17.76 **Penalties**

1. With respect to the offences specified in Article 17.75 (Criminal Offences), each Party shall provide for penalties that include imprisonment and monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity.
2. Each Party shall provide that its judicial authorities may, in determining penalties, account for the seriousness of the circumstances, which may include circumstances that involve threats to, or effects on, health or safety.

Article 17.77 **Seizure, Forfeiture, and Destruction**

1. With respect to the offences specified in Article 17.75 (Criminal Offences), each Party shall provide the following:
 - (a) its judicial or other competent authorities shall have the authority to order the seizure of suspected counterfeit trade mark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence, and assets derived from, or obtained through, the alleged infringing activity. If a Party requires identification of items subject to seizure as a prerequisite for issuing a judicial order referred to in this subparagraph, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure;
 - (b) its judicial authorities shall have the authority in accordance with that Party's law to order the forfeiture of any assets derived from, or obtained through, the infringing activity;
 - (c) subject to paragraph 2, its judicial authorities shall have the authority, in accordance with that Party's law, to order the forfeiture or destruction of:
 - (i) counterfeit trade mark goods or pirated copyright goods;

²⁹ Each Party shall also provide that the offences specified in this Article are applicable in any free trade zones in a Party.

- (ii) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trade mark goods; and
 - (iii) any other labels or packaging to which a counterfeit trademark has been applied and that have been used in the commission of the offence; and
 - (d) its judicial or other competent authorities shall have the authority to release or, in the alternative, provide access to, goods, material, implements, and other evidence held by the relevant authority to a right holder for civil infringement proceedings.
2. With respect to forfeiture or destruction ordered in accordance with subparagraph 1(c), each Party shall provide that:
- (a) in cases in which destruction of counterfeit trade mark goods or pirated copyright goods is not ordered, the judicial or other competent authorities shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder; and
 - (b) in cases in which forfeiture or destruction is ordered, it shall occur without compensation of any kind to the offender.
3. With respect to the offences specified in Article 17.75 (Criminal Offences), a Party may provide that its judicial authorities may order the seizure or forfeiture of assets, or alternatively, a fine, the value of which corresponds to the assets derived from, or obtained directly or indirectly through, the infringing activity.

Article 17.78
Ex Officio Enforcement

Each Party shall provide that its competent authorities may act upon their own initiative to initiate legal action with respect to the offences specified in Article 17.75 (Criminal Offences), without the need for a formal complaint by a third party or right holder.

Article 17.79
Liability of Legal Persons

Each Party shall provide that legal persons³⁰ as well as natural persons may incur liability for the offences specified in Article 17.75 (Criminal Offences) in accordance with its law.

Sub-Section K.5
Enforcement in the Digital Environment

Article 17.80
General Obligations on Enforcement in the Digital Environment

Each Party shall provide that the enforcement measures, procedures and remedies, referred to in Sub-Sections K.2 (Enforcement – Civil Remedies) and K.4 (Enforcement – Criminal Remedies), including expeditious remedies to prevent infringement, as applicable, are available under its law to proceed against an act of infringement of intellectual property rights that takes place in the digital environment or over digital networks, including through electronic commerce platforms and social media.

Article 17.81
Limitations on Liability of Online Service Providers

1. The Parties recognise that the services of online service providers (“OSPs”) are increasingly used in the course of the infringement of intellectual property rights, and that OSPs are often in the best position to bring such infringing activities to an end.
2. Each Party shall introduce or maintain measures that apply, in appropriate cases, to limit the liability of, or remedies available against, an OSP for copyright and related rights infringement by a user of its services. For greater certainty, a Party may extend these measures to cover other intellectual property rights.
3. Each Party shall ensure that the measures introduced or maintained under paragraph 2 include conditions to qualify for the limitation, in accordance with a Party’s law, including, where practicable, requiring the OSP to take action to prevent access to the materials infringing copyright or related rights.
4. This Article shall not affect the ability of a court or administrative authority, in accordance with the legal system of a Party, to require the OSP to terminate or prevent an infringement, including by the grant of a blocking order under Article 17.82 (Blocking Orders).

³⁰ For the purposes of this Article, the term “legal person” shall mean bodies corporate.

Article 17.82 Blocking Orders

Each Party shall ensure that injunctions as provided for in Article 17.67 (Provisional and Precautionary Measures) and Article 17.70 (Injunctions):

- (a) are available against an OSP, where its online services are used by a third party to infringe an intellectual property right; and
- (b) include injunctions requiring that OSPs disable access to infringing content.

Article 17.83 Procedures for Domain Registries

Each Party shall encourage its domain registry to take appropriate, timely, and effective measures to suspend domains used for infringing intellectual property on their respective country-code top-level domains.³¹

Article 17.84 Disclosure of Information

Each Party shall provide that, in accordance with its law, its competent authorities³² may order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, if that right holder has filed a legally sufficient claim of trade mark or copyright or related rights infringement, and if such information is being sought for the purpose of protecting or enforcing those rights.

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

Article 17.85 Transparency of Judicial Decisions and Administrative Rulings

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

³¹ For greater certainty, this Article is without prejudice to the independence of each Party's domain registry.

³² For the purposes of this Article, "competent authorities" may include the appropriate judicial, administrative, regulatory, or law enforcement authorities under a Party's law.

- (a) preferably are in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based; and
- (b) are published or, if publication is not practicable, otherwise made available to the public in a national language of the Party in such a manner as to enable interested persons and the other Party to become acquainted with them.

Article 17.86 **Voluntary Stakeholder Initiatives**

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

Article 17.87 **Public Awareness**

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

Article 17.88 **Specialised Enforcement Expertise, Information and Domestic Coordination**

1. Each Party shall encourage the development of specialised expertise within its competent authorities responsible for the enforcement of intellectual property rights, including with respect to infringement taking place in the digital environment.
2. Each Party shall, as appropriate, promote internal coordination between, and facilitation of joint actions by, its competent authorities with respect to the enforcement of intellectual property rights, subject to the Party's available resources.

Article 17.89
Environmental Considerations in Destruction and Disposal of Infringing Goods

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