

CHAPTER SIXTEEN

INTELLECTUAL PROPERTY

第十六章

知识产权

Article 16.1: Objectives

The objectives of this Chapter are to:

- (a) facilitate international trade and economic, social and cultural development through the dissemination of ideas, technology, and creative works;
- (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights;
- (c) achieve a balance between the rights of intellectual property right-holders and the legitimate interests of intellectual property users with regard to intellectual property; and
- (d) strengthen the Parties’ cooperation in the field of intellectual property.

Article 16.2: Scope of Intellectual Property

For the purposes of this Chapter, 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.

Article 16.3: Affirmation of International Agreement

The Parties affirm their rights and obligations under the TRIPS Agreement and other intellectual property agreements to which both Parties are party.

第十六条第1款：目标

本章的目标是：

(a) 通过传播思想、技术和创意作品，促进国际贸易及经济、社会和文化发展；(b) 实现知识产权权利的充分和有效保护与执行；(c) 在知识产权方面，实现知识产权权利人与知识产权使用人权利之间的平衡；以及(d) 加强缔约方在知识产权领域的合作。

第十六条第2款：知识产权范围

根据本章的规定，知识产权是指与贸易有关的知识产权协定第二部分第1节至第7节所涵盖的所有知识产权类别。

第16.3条：国际协议的确认

各缔约方重申其根据与贸易有关的知识产权协定及其他各缔约方均为缔约方的知识产权协定所享有的权利和应履行的义务。

Article 16.4: Nature and Scope of Obligation

- 1. Each Party may provide more extensive protection for, and enforcement of, intellectual property rights under that Party’s domestic law than this Chapter requires, provided that the more extensive protection does not contravene this Chapter.
- 2. Each Party shall be free to determine the appropriate method of implementing this Agreement within its own legal system and practice.
- 3. This Agreement does not create any obligation with respect to the distribution of resources between enforcement of intellectual property rights and enforcement of law in general.

Article 16.5: Public Health Concerns

- 1. The Parties recognise the importance of the *Declaration on the TRIPS Agreement and Public Health* (hereinafter referred to as the “Doha Declaration”) adopted on 14 November 2001 by the WTO Ministerial Conference. In interpreting and implementing the rights and obligations under this Chapter, the Parties are entitled to rely on the Doha Declaration.
- 2. The Parties shall contribute to the implementation of, and respect, the Decision of the WTO General Council of 30 August 2003 on the Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005.

Article 16.6: National Treatment

- 1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property pursuant to Articles 3 and 5 of the TRIPS Agreement.

第十六节：义务的性质和范围

- 1. 各缔约方可以依据其国内法为知识产权提供更广泛的保护并执行更广泛的保护，前提是该更广泛的保护不违反本章。
- 2. 各缔约方可以自由确定在本国的法律制度和实践中实施本协定的适当方法。
- 3. 本协定并未就知识产权的执行与一般法律的执行之间的资源分配问题创造任何义务。

第十六节：公共卫生问题

- 1. 各缔约方承认世界贸易组织部长会议于2001年11月14日通过的有关与贸易有关的知识产权协定和公共卫生的宣言（以下简称“多哈宣言”），并承认在解释和实施本章规定的权利和义务时，各缔约方有权依据多哈宣言。
- 2. 各缔约方应促进并尊重世界贸易组织总理事会2003年8月30日关于实施与贸易有关的知识产权协定和公共卫生的多哈宣言第6段的决议，以及2005年12月6日在日内瓦通过的对与贸易有关的知识产权协定的修正议定书。

第十六条第六款：国民待遇

- 1. 就本章涵盖的所有知识产权类别而言，每一方应给予另一方的国民不低于其给予本国国民的知识产权保护待遇，该待遇依据与贸易有关的知识产权协定第3条和第5条的规定。

2. In respect of the rights of performers and producers of phonograms, a Party may satisfy the obligation in paragraph 1 by providing national treatment to the nationals of the other Party specifically granted in this Chapter in accordance with the *WIPO Performances and Phonograms Treaty*, done 20 December 1996 at Geneva (hereinafter referred to as the “WPPT”).

Article 16.7: Exhaustion

This Chapter does not affect the freedom of the Parties to determine whether and under what conditions the exhaustion of intellectual property rights applies.

Article 16.8: Disclosure of Information

This Chapter does not require a Party to disclose information that would impede law enforcement, be contrary to that Party’s domestic law, or be exempt from disclosure under that Party’s domestic law.

Article 16.9: Trademarks

Trademarks Protection

1. A Party shall not require, as a condition of registration, that signs be visually perceptible, or deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound.¹
2. Each Party shall provide that trademarks include collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in that Party’s domestic law, provided that such marks are protected.

¹ A Party may require an adequate representation, or description, of the sign.

2. 就表演者及录音制品制作者的权利而言，一方可通过根据世界知识产权组织表演和录音制品条约（1996年12月20日在日内瓦签署，以下简称“WPPT”）在本章中特别授予另一方法定国民的待遇，来履行第1段项下的义务。

第十六节 权利穷竭

本章不影响缔约方确定知识产权穷竭是否适用以及适用何种条件的自由。

第十六节 信息披露

本章不要求一方披露会妨碍执法、与该方国内法相抵触或根据该方国内法免于披露的信息。

第十六节 商标

商标保护

1. 一方不得将标志在视觉上可感知作为注册的条件，也不得仅因构成该标志的标志是声音而拒绝注册商标。¹
2. 各缔约方应当规定商标包括集体商标和认证商标。一方没有义务在其国内法中将认证商标视为一个单独的类别，只要这些标记受到保护。

¹ 一方可以要求对标志进行充分的表示或描述。

3. Each Party shall provide that the owner of a registered trademark 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, at least for goods or services that are identical or similar to the goods or services in respect of which the owner’s trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of each Party making rights available on the basis of use.

Exceptions to Trademarks Rights

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

Well-Known Trademarks

5. A Party shall not require, as a condition for determining that a mark is a well-known mark, that the mark has been registered in the territory of that Party or in another jurisdiction. Each Party shall make available remedies to the owner of a well-known trademark, whether or not such mark:

- (a) is registered;
- (b) is included on a list of well-known marks; or
- (c) has already been recognised as being well-known.

6. Article 6bis of the *Paris Convention for the Protection of Industrial Property* (1967) done 14 July 1967 at Stockholm (hereinafter referred to as the “Paris Convention”) shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark², 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.

² For the purpose of determining whether a mark is well-known, a Party shall not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

3. 各缔约方应当规定，注册商标的所有者有权制止未经其同意的第三方在贸易过程中使用与商标相同或近似的标志，至少在商品或服务与注册商标所指定的商品或服务相同或类似，且此种使用易导致混淆的情况下。对于相同商品或服务使用相同标志的情况，应推定存在混淆可能性。上述权利不妨碍任何现有的在先权利，也不应影响各缔约方基于使用而使权利可用的可能性。

商标权的例外

4. 各缔约方可以对商标权授予有限的例外，例如描述性词语的合理使用，但前提是这些例外要考虑到商标所有者的合法利益和第三方的合法利益。

驰名商标

5. 一方不得要求，作为认定一个标志是驰名商标的条件，该标志已在其领土内注册或在他方司法管辖区域内注册。每一方应为驰名商标所有者提供救济措施，无论该标志：(a) 是否已注册；(b) 是否被列入驰名商标名单；或(c) 是否已被认定为驰名。

(a) 已注册；(b) 被列入驰名商标名单；或(c) 已被认定为驰名。

6. 《保护工业产权巴黎公约》（1967年）第6条之二（以下简称“巴黎公约”）应适用于与被认定为驰名商标²，所指定的商品或服务不相同或类似的商品或服务，无论该驰名商标是否已注册，只要在该商品或服务上使用该商标会表明这些商品或服务与该商标所有人之间存在联系，并且该商标所有人的利益可能因这种使用而受到损害。

² 为确定一个标志是否为驰名商标，一方不得要求该商标的声誉超越通常处理相关商品或服务的公众群体。

7. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark, for related goods or services, if the use of that trademark is likely to cause confusion.

Registration and Applications of Trademarks

8. Each Party shall provide a system for the registration of trademarks, in which the reasons for a refusal to register a trademark are communicated in writing and may be provided electronically to the applicant. The Party shall provide to the applicant an opportunity to contest that refusal and to judicially appeal a final refusal.

9. Each Party shall introduce the possibility to oppose trademark applications.

10. Each Party shall provide, to the extent possible, a publicly available electronic information system of trademark applications and registered trademarks.

11. 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.

7. 各缔约方应规定适当的措施，拒绝或取消与驰名商标相同或类似的商标在相关商品或服务上的注册，并禁止其使用，如果使用该商标可能导致混淆。

商标注册和申请

8. 各缔约方应当提供商标注册制度，在该制度中，商标注册驳回的理由应以书面形式传达，并可通过电子方式提供给申请人。缔约方应当给予申请人申辩该驳回决定的机会，并允许对最终驳回决定提起司法上诉。

9. 各缔约方应当引入反对商标申请的可能性。 10. 各缔约方应当在可能范围内，提供公开的电子信息系统，用于商标申请和注册商标。 11. 各缔约方应当规定，商标的初始注册和每次注册续展的期限均不得少于10年。

Article 16.10: Protection of Geographical Indications³

1. Canada shall, with respect to the geographical indications⁴ of “*GoryeoHongsam*”, “*GoryeoBaeksam*”, “*GoryeoSusam*”, and “*IcheonSsal*” and their translations, respectively, “Korean Red Ginseng”, “Korean White Ginseng”, “Korean Fresh Ginseng” and “Icheon Rice”, provide the legal means⁵ for interested parties to prevent:

- (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner that misleads the public as to the geographical origin of the good;
- (b) the use of any of these geographical indications for ginseng or rice, as the case may be, that does not originate in the place indicated by the geographical indication in question, even where the true origin of the relevant good is indicated or the geographical indication is used in translation or transcription or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like; and
- (c) any other use that constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

³ Geographical indications are, for the purposes of this Article, indications which identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

⁴ For greater certainty, an individual component of a multi-component term that is protected as a geographical indication in a Party under this Article shall not be protected in that Party where the individual component is a term customary in the common language as the common name for the associated goods.

⁵ “Legal means” includes recognition of these terms without additional action required by the geographical indication right-holder and the provision of remedies consistent with Articles 16.13.1 through 16.13.4, 16.13.6, and 16.13.7. Parties shall discuss enforcement issues such as civil or border measures, etc. under the Committee established pursuant to Article 16.18. The Parties may apply opposition and cancellation procedures to the protection provided for in paragraphs 1 and 2.

第十六条第10款：地理标志的保护³

1. 加拿大应当，对于“高丽红参”、“高丽白参”、“高丽鲜参”和“伊川人参”的地理标志⁴ 及其翻译，分别为“韩国红参”、“韩国白参”、“韩国鲜参”和“伊川大米”，提供法律手段⁵ 供利害关系方防止：

- (a) 任何手段在商品名称或表示中使用，表明或暗示该商品来源于真实产地以外的地理区域，并以误导公众对商品地理来源的方式使用；
- (b) 未经有关地理标志所指示的产地出产的人参或大米（以适当时）的使用，即使相关商品的真正来源已标明，或者地理标志被用于翻译或转写，或者伴有“种类”、“类型”、“风格”、“仿制”等类似表述；以及
- (c) 任何其他构成《巴黎公约》第十条之补充条文中不正当竞争行为的使用。

地理标志，根据本条的规定，是指将商品来源于缔约方领土或该领土内的某个地区或地方的标志，其中商品所具有的特定质量、声誉或其他特征主要归因于其地理来源。为了更明确起见，根据本条在一方作为地理标志予以保护的由多个组成部分构成的多组成部分术语中的单个组成部分，在该单个组成部分作为相关商品的通用名称而属于常用语言中的常用术语时，不应在该方予以保护。“法律手段”包括无需地理标志权利持有人采取额外行动即可确认这些术语， 以及提供与第16.13.1至16.13.4、16.13.6和16.13.7条一致的有效救济措施。缔约方应在根据第16.18条设立的委员会下讨论民事或边境措施等执行问题。缔约方可对第1段和第2段规定的保护适用异议和撤销程序。

2. Korea shall, with respect to the geographical indications of “Canadian Whisky” and “Canadian Rye Whisky”, provide the legal means for interested parties to prevent:

- (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner that misleads the public as to the geographical origin of the good;
- (b) the use of any of these geographical indications for a spirit that does not originate in the place indicated by the geographical indication in question, even where the true origin of the spirit is indicated or the geographical indication is used in translation or transcription or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like; and
- (c) any other use that constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

3. If a trademark has been applied for or registered in good faith, or if rights to a trademark have been acquired through use in good faith, in the territory of a Party before the entry into force of this Agreement, measures adopted to implement this Article in that Party shall not prejudice the eligibility for or the validity of the registration of the trademark, or the right to use the trademark, on the basis that the trademark is identical with, or similar to, a geographical indication.

4. A Party is not obligated under this Article to protect geographical indications that are not, or cease to be protected in their place of origin, or that have fallen into disuse in that place.

5. A Party may provide that any request made under this Article in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party, provided that the geographical indication is not used or registered in bad faith.

2. 韩国 应就“加拿大威士忌”和“加拿大黑麦威士忌”的地理标志，为有关缔约方提供法律手段以防止：

- (a) 任何在商品名称或表示中使用任何手段，表明该商品来源于地理区域以外的真实产地，并以误导公众对该商品地理来源的方式使用；
- (b) 使用这些地理标志中的任何一种用于烈酒，而该烈酒并非来自地理标志所指示的地点，即使烈酒的真实来源被标明或地理标志被翻译或转写或伴有“种类”、“类型”、“风格”、“仿制”等类似表述；以及 (c) 任何其他构成《巴黎公约》第十条之补充条所述不正当竞争行为的使用。

3. 如果一方在本协定生效前，以善意申请或注册商标，或通过善意使用获得商标权利，则该方为实施本条所采取的措施不应损害商标的资格或注册的有效性，或使用商标的权利，理由是该商标与地理标志相同或相似。

4. 一方在本条文中没有义务保护在其原产地不受保护或不再受保护，或在该地已停止使用的地理标志。

5. 一方可以规定，根据本条关于商标使用或注册的任何请求，必须在受保护指示的不正当使用在该方变得普遍知晓之日起五年内提出，或者在该商标在该方注册之日起提出，前提是该商标在该日期前已公布，如果该日期早于该不正当使用在该方变得普遍知晓的日期，前提是该地理标志并非恶意使用或注册。

Article 16.11: Copyright and Related Rights

Protection Granted

1. Each Party shall comply with:
- (a) the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*, done at Rome on 26 October 1961 (hereinafter referred to as the “Rome Convention”);
 - (b) the *Berne Convention for the Protection of Literary and Artistic Works (1971)*, done at Paris on 24 July 1971 (hereinafter referred to as the “Berne Convention”);
 - (c) the *WIPO Copyright Treaty*, done at Geneva on 20 December 1996 (hereinafter referred to as the “WCT”); and
 - (d) the WPPT.

Rights of Copyright Holder

2. Each Party shall provide⁶ that authors, performers, and producers of phonograms have the right to authorise or prohibit all reproductions of their works and other subject matters including performances⁷ and phonograms in any manner or form.^{8,9}

Right to Remuneration for Broadcasting and Communication to the Public

3. Each Party shall provide to performers and producers of phonograms the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.¹⁰

⁶ The Parties reaffirm that it is a matter for each Party’s law to prescribe that works in general or any specified categories of works, performances and phonograms shall not be protected by copyright or related rights unless they have been fixed in some material form.

⁷ For the purposes of this Chapter, a “performance” means a performance fixed in a phonogram unless otherwise specified.

⁸ The agreed statements in the WCT and WPPT that are applicable to the rights of reproduction provided by the agreements and treaties listed in paragraph 1 apply as well to this paragraph, including any agreed statements concerning limitations and exceptions.

⁹ A Party may determine limitations and exceptions with regard to temporary reproductions under that Party’s domestic law.

¹⁰ A Party may satisfy the obligation in this paragraph by implementing such a right in accordance with the WPPT.

第十六条第十一条：版权和相关权利

已授予保护

1. 各缔约方应当遵守：
- (a) 《保护表演者、录音制品制作者和广播组织国际公约》，1961年10月26日在罗马签署（以下简称“罗马公约”）；
 - (b) 《保护文学和艺术作品公约》（1971年），1971年7月24日在巴黎签署（以下简称“伯尔尼公约”）；
 - (c) 《世界知识产权组织版权条约》，1996年12月20日在日内瓦签署（以下简称“WCT”）；
 - 以及(d) 《世界知识产权组织表演和录音制品条约》。

版权持有人权利

2. 各缔约方应当提供⁶ 作者、表演者和录音制品制作者有权授权或禁止其作品和其他标的的全部复制，包括以任何方式或形式进行的表演⁷ 和录音制品^{8,9}。

广播和向公众传播的报酬权

3. 各缔约方应当向表演者和录音制品制作者提供就商业目的发布的录音制品的直接或间接广播或向公众传播而获得单一公平报酬的权利。¹⁰

⁶ 各缔约方重申，由各缔约方法律规定，除以某种物质形式固定外，一般作品或任何特定类别的作品、表演和音录制品均不享有版权或相关权利是一回事。⁷ 就本章而言，“表演”是指以音录制品固定的表演，除非另有规定。⁸ 在WCT和WPPT中就列于第1段所列协议和条约所提供的复制权适用的协议性声明，同样适用于本段，包括任何有关限制和例外的协议性声明。⁹ 一方可以依据其国内法确定对临时复制所适用的限制和例外。¹⁰ 一方可以通过根据WPPT实施此种权利来履行本段的义务。

Protection of Technological Measures

4. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures¹¹ that are used by authors, performers or producers of phonograms in connection with the exercise of their rights in, and that restrict acts in respect of, their works, performances, and phonograms, which are not authorised by the authors, performers or producers of phonograms concerned or permitted by law.
5. In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 4, each Party shall provide protection against at least:
- (a) to the extent provided by its law:
 - (i) the unauthorised circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know; and
 - (ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and
 - (b) the manufacture, importation, or distribution of a device or product, including computer programs, or provision of a service that:
 - (i) is primarily designed or produced for the purpose of circumventing an effective technological measure; or
 - (ii) has only a limited commercially significant purpose other than circumventing an effective technological measure.

¹¹ For the purposes of this Article, “technological measures” means any technology, device, or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, performances, or phonograms, which are not authorised by authors, performers or producers of phonograms, as provided for by a Party’s domestic law. Without prejudice to the scope of copyright or related rights contained in a Party’s domestic law, technological measures are deemed effective where the use of protected works, performances, or phonograms is controlled by authors, performers or producers of phonograms through the application of a relevant access control or protection process, such as encryption or scrambling, or a copy control mechanism, which achieves the objective of protection.

技术保护措施的保护

4. 各缔约方应当提供充分的法律保护和有效的法律救济，以防止规避由作者、表演者或录音制品制作者在使用其权利时为行使其权利而与作品、表演和录音制品相关联的有效技术保护措施，这些措施限制未经有关作者、表演者或录音制品制作者授权或法律允许的行为。¹¹
5. 为了提供第4段所述的充分的法律保护和有效的法律救济，每一缔约方应当提供至少以下保护：
- (a) 在其法律规定的范围内：
 - (i) 未经授权规避有效的技术保护措施，该规避行为是明知或应知的；以及所采取的；
 - (ii) 通过营销向公众提供设备或产品包括计算机程序，或作为一种服务。规避有效的技术保护措施；以及
 - (b) 制造、进口或分销设备或产品，包括计算机程序，或提供服务，该服务：
 - (i) 主要设计或生产用于规避有效的技术保护措施；或 (ii) 除了规避有效的技术保护措施外，仅具有有限的市场商业意义。

第十六章 第十六条第十一条：版权和相关权利 对于本条而言，“技术措施”是指任何技术、设备或组件，其在正常运行过程中被设计用于防止或限制未经作者、表演者或录音制品制作者授权的行为，这些行为涉及作品、表演或录音制品，且根据一方国内法的规定。在不损害一方国内法中包含的版权或相关权利范围的情况下，技术措施被视为有效，当受保护的作品、表演或录音制品的使用通过应用相关访问控制或保护过程（例如加密或解密）或复制控制机制来由作者、表演者或录音制品制作者控制，并且该机制实现了保护目的时。

6. In implementing paragraphs 4 and 5, a Party is not 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 a particular technological measure, so long as the product does not otherwise contravene that Party’s measures implementing these paragraphs. This Agreement does not require a Party to mandate interoperability in that Party’s law, *i.e.*, there is no obligation for the Information Communication Technology industry to design devices, products, components, or services to correspond to certain technological protection measures.

7. In providing adequate legal protection and effective legal remedies pursuant to paragraph 4, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing paragraphs 4 and 5. The obligations set forth in paragraphs 4 and 5 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party’s domestic law.

Protection of Rights Management Information

8. To protect electronic rights management information¹², each Party shall provide adequate legal protection and effective legal remedies against any person knowingly performing without authority any of the following acts knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related rights:

- (a) to remove or alter any electronic rights management information;

¹² For the purposes of this Article, “rights management information” means:

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

6. 在实施第4段和第5段时，一方无义务要求消费电子产品、电信产品或计算产品的设计，或其零部件的设计和选择，能够响应特定的技术措施，只要该产品在其他方面不违反该方实施这些段落的措施。本协议不要求一方在其法律中强制规定互操作性，即，信息通信技术产业无义务设计设备、产品、组件或服务以符合某些技术保护措施。

7. 在根据第4段提供充分的法律保护和有效的法律救济时，一方可以采用或维持适用于实施第4段和第5段的适当限制或例外。第4段和第5段中规定的义务不影响一方国内法中版权或相关权利侵权的权利、限制、例外或抗辩。

权利管理信息保护

8. 为保护电子权利管理信息¹²，每一方应提供充分的法律保护和有效的法律救济，以防止任何个人明知无权而实施下列行为，且明知或有合理理由知道该行为将诱使、使能、便利或掩盖对任何版权或相关权利的侵权：

- (a) 删除或修改任何电子权利管理信息；

¹² 就本条而言，“权利管理信息”是指：（a）识别作品、表演或录音的信息；作品的作者、表演的表演者或录音的制作者；或作品、表演或录音中任何权利的所有者；（b）关于作品、表演或录音使用条款和条件的信息；或（c）代表上述（a）和（b）中描述的信息的任何数字或代码；当这些信息项目中的任何一项信息附在作品、表演或录音的副本上，或在与向公众传播或提供作品、表演或录音相关时出现时。

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

9. In providing adequate legal protection and effective legal remedies pursuant to paragraph 8, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing paragraph 8. The obligations set forth in paragraph 8 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party’s law.

Protection of Encrypted Program-Carrying Satellite Signals

10. Each Party shall make it a criminal or civil offense:
- (a) to manufacture, import, sell, lease, or otherwise make available a device or system that is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorisation of the lawful distributor of such signal; and
 - (b) to receive, in connection with commercial activities, or further distribute, an encrypted program-carrying satellite signal that has been decoded without the authorisation of the lawful distributor of the signal.

Each Party shall provide that any civil offense established under subparagraph (a) or (b) is actionable by any person that holds an interest in the content of the signal.

Article 16.12: Patents

1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application¹³. In addition, each Party confirms that patents shall be available for any new uses or methods of using a known product, provided that the invention is new, involves an inventive step, and is capable of industrial application.

¹³ For the purposes of this Article, a Party may treat the term “inventive step” as synonymous with “non-obvious” and the term “capable of industrial application” as synonymous with “useful.”

- (b) 分销、进口分销、广播、传播或向公众提供作品、表演或录音制品的副本，明知电子权利管理信息已被未经授权删除或修改。

9. 在根据第8段提供充分的法律保护和有效的法律救济时，一方可以采用或维持针对实施第8段的措施的适当限制或例外。第8段中规定的事项不影响一方法律规定的版权或相关权利侵权的权利、限制、例外或抗辩。

加密节目传输卫星信号的保护

10. 各缔约方应将下列行为定为刑事或民事犯罪：
- (a) 制造、进口、销售、租赁或以其他方式提供主要用于解码未经合法发行人授权的加密节目传输卫星信号的设备或系统；以及 (b) 在商业活动中接收，或进一步分发未经合法发行人授权而已解码的加密节目传输卫星信号。

各缔约方应规定，根据第(a)项或第(b)项确立的任何民事犯罪可由任何对信号内容有兴趣的人提起诉讼。

第16.12条：专利

1. 各缔约方应当使专利适用于所有技术领域的任何发明，无论是产品还是工艺，前提是该发明是新的、涉及创造性步骤并且具有工业应用能力¹³。此外，各缔约方确认，专利应当适用于任何已知产品的新的用途或使用方法，前提是该发明是新的、涉及创造性步骤并且具有工业应用能力。

¹³ 根据本条目的目的，一方可以将术语“创造性步骤”视为与“非显而易见”同义，并将术语“具有工业应用能力”视为与“有用的”同义。

Exclusion from Patentability

2. Each Party may exclude from patentability:
- (a) inventions, the prevention within that Party’s 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 that Party’s domestic law;
 - (b) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; and
 - (c) 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.

Limited Exceptions to Patent Rights

3. Each 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 16.13: Enforcement of Intellectual Property Rights

General Obligations

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

可专利性排除

2. 各缔约方可将以下内容排除在可专利性之外：
- (a) 发明，在其一方领土内防止其商业利用对于保护公共秩序或道德是必要的，包括为了保护人类、动物或植物的生命或健康或避免对环境的严重损害，前提是该排除并非仅仅因为该方的国内法禁止其利用；(b) 用于治疗人类或动物的诊断、治疗和外科方法；以及(c) 除微生物以外的植物和动物，和本质上生物的过程用于生产除非生物和微生物过程以外的植物或动物。然而，每一方应当为植物品种的保护提供保障，无论是通过专利、有效的特殊系统，还是通过其任何组合。

专利权的有限例外

3. 各缔约方可以提供专利授予的排他权的有限例外，前提是这些例外不与专利的正常利用不合理地冲突，并且不不合理地损害专利权人的合法利益，同时考虑到第三方的合法利益。

第16.13条：知识产权的执行

一般义务

1. 各缔约方应当确保其国内法规定有执行程序，以便能够对在本章涵盖的任何知识产权侵权行为采取有效行动，包括迅速的救济措施和构成进一步侵权威慑的救济措施。这些程序应当以避免造成合法贸易的障碍并为防止其滥用提供保障的方式适用。

2. Each Party shall provide that the procedures adopted, maintained, or applied to implement this Chapter are fair and equitable, and provide for the rights of all participants subject to such procedures to be appropriately protected. Each Party shall also provide that these procedures are not unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

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

4. This Chapter is not to be construed to require a Party to make its officials subject to liability for acts undertaken in the performance of their official duties.

Presumption of Authorship or Ownership

5. In civil proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated as the author, performer, or producer 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 rights subsist in such subject matter.

Civil and Administrative Procedures and Remedies¹⁴

6. Each Party shall make available to right holders¹⁵ civil judicial procedures concerning the enforcement of any intellectual property right.

7. 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 those procedures conform to principles equivalent in substance to those set forth in this Article.

¹⁴ A Party may exclude protection of undisclosed information from the scope of this Article.

¹⁵ For the purposes of this Article, “right holder” includes a federation or an association having the legal standing and authority to assert such rights, and also includes a person that exclusively has any one or more of the intellectual property rights encompassed in a given intellectual property.

2. 各缔约方应当确保为实施本章而采纳、维持或适用的程序是公平和公正的，并为受这些程序约束的所有参与者的权利提供适当的保护。各缔约方还应当确保这些程序不必要地复杂或昂贵，或不包含不合理的时间限制或不必要的延误。

3. 在实施本章时，各缔约方应当考虑侵权行为的严重性、第三方的利益以及适用的措施、救济和处罚之间的比例原则。

4. 本章不得解释为要求缔约方使其官员对其执行官方职责的行为承担法律责任。

作者或所有权推定

5. 在涉及版权或相关权利的民事诉讼中，各缔约方应当规定，在没有相反证据的情况下，以通常方式指明为作品、表演或录音的作者、表演者或制作人的个人是该作品、表演或录音的指定权利持有人的一种推定。各缔约方还应当规定，在没有相反证据的情况下，版权或相关权利存在于该标的之中的推定。

民事和行政程序及救济¹⁴

6. 各缔约方应当向权利人提供¹⁵ 有关执行任何知识产权的民事司法程序。

7. 在行政程序审理案件实质问题上，若可裁定任何民事救济措施，各缔约方应确保该程序符合本条所规定实质上等效的原则。

¹⁴ 一方可以将未披露信息的保护排除在本条的范围之外。¹⁵ 就本条而言，“权利人”包括具有主张这些权利的法律地位和权力的联盟或协会，并且也包括唯一拥有在特定知识产权中包含的一个或多个知识产权的个人。

Injunctions

8. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, that Party’s judicial authorities have the authority to issue an order against a person to desist from an infringement, *inter alia*, to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce.

9. Notwithstanding the other provisions of this Article, a Party may limit the remedies available against use by governments or by third parties authorised by a government, without the authorisation of the right holder, to the payment of remuneration, provided that the Party complies with the provisions of Part II of the TRIPS Agreement specifically addressing that use. In other cases, the remedies under this Article shall apply or, where these remedies are inconsistent with a Party’s law, declaratory judgments and adequate compensation shall be available.

Damages^{16, 17}

10. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, that Party’s judicial authorities have the authority to order the infringer who, knowingly or with reasonable grounds to know, engaged in infringing activity to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement¹⁸. In determining the amount of damages for infringement of intellectual property rights, a Party shall provide that its judicial authorities have the authority to consider, *inter alia*, any legitimate measure of value the right holder submits, which may include lost profits or the value of the infringed goods or services measured by the market price or the suggested retail price.

¹⁶ For greater certainty, a Party may exclude from the application of this Article cases of copyright or related rights infringement where an infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

¹⁷ For greater certainty, a Party is not obliged to provide for the possibility of the remedies in paragraphs 10 through 12 to be ordered in parallel.

¹⁸ A Party may also provide that the right holder is not be entitled to any of the remedies set out in paragraphs 10 through 14 in the case of a finding of non-use of a trademark.

禁令

8. 各缔约方应当规定，在涉及知识产权执行的民事诉讼程序中，该缔约方的司法当局有权向个人发布停止侵权的命令，’，防止涉及侵犯知识产权的货物进入商业渠道。。

9. 不论本条其他规定如何，缔约方可以将针对未经知识产权权利人授权而由政府或经政府授权的第三方使用的救济措施限制为支付报酬，前提是该缔约方遵守与贸易有关的知识产权协定第二部分中专门针对该使用的条款。在其他情况下，本条的救济措施应当适用；如果这些救济措施与缔约方法律不一致，则应提供宣告性判决和充分赔偿’。。

损害赔偿^{16, 17}

10. 各缔约方应当规定，在涉及知识产权执行的民事诉讼程序中，缔约方的司法当局有权命令明知或应知从事侵权行为的侵权人向权利人支付足以补偿权利人因侵权所遭受损害的损害赔偿¹⁸。在确定知识产权侵权的损害赔偿金额时，缔约方应当规定其司法当局有权考虑，包括但不限于权利人提交的任何合法价值衡量标准，这可能包括利润损失或侵权商品或服务的市场价或建议零售价。

¹⁶为了进一步明确，缔约方可以将未经侵权人明知或合理应知其参与了侵权行为的情况下的版权或相关权利侵权案件排除在本条适用之外。¹⁷为了进一步明确，缔约方没有义务规定第10段至第12段规定的救济措施可以并行下令。¹⁸缔约方还可以规定，在商标未使用的情况下，权利人无权获得第10段至第14段规定的任何救济措施。

11. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, that Party’s judicial authorities have the authority to order the infringer to pay the right holder the infringer’s profits that are attributable to the infringement. A Party may presume those profits to be the amount of damages referred to in paragraph 10.

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

- (a) pre-established damages;
- (b) presumptions¹⁹ for determining the amount of damages sufficient to compensate the right holder for the harm caused by the infringement; or
- (c) at least for copyright, additional damages.

13. If a Party provides the remedy referred to in paragraph 12(a) or the presumptions referred to in paragraph 12(b), that Party shall ensure that either its judicial authorities or the right holder has the right to choose such a remedy or presumptions as an alternative to the remedies referred to in paragraphs 10 and 11.

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

¹⁹ The presumptions referred to in this subparagraph may include a presumption that the amount of damages is:

- (a) the quantity of the goods infringing the right holder’s intellectual property right in question and actually assigned to third persons, multiplied by the amount of profit per unit of goods which would have been sold by the right holder if there had not been the act of infringement;
- (b) a reasonable royalty; or
- (c) a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

11. 至少在版权或相关权利侵权和商标假冒的情况下，各缔约方应当规定，在民事诉讼程序中，缔约方的司法当局有权命令侵权人向权利人支付归属于侵权的侵权人利润。缔约方可以推定这些利润为第10段中提到的损害赔偿金额。

12. 至少在保护作品、音录制品和表演的版权或相关权利，以及商标假冒的情况下，每一缔约方应当建立或维持提供下列一项或多项的系统：

- (a) 预先确定的损害赔偿；(b) 用于确定足以补偿权利人因侵权行为所受损害的损害赔偿金额的假定；或 (c) 至少在版权方面，额外损害赔偿。

13. 如果一方提供了第12(a)段所述的救济措施或第12(b)段所述的假定，该方应当确保其司法当局或权利人有权选择这些救济措施或假定，作为第10段和第11段所述的救济措施的选择方案。

14. 各缔约方应当规定，在其司法当局在适当情况下，有权在至少涉及版权或相关权利、商标和专利的民事诉讼程序结束时，命令胜诉方由败诉方支付诉讼费用、适当的律师费或其国内法规定的其他费用。

¹⁹ 本小段所述的假定可以包括这样一种假定，即损害赔偿金额为：(a) 侵犯权利人知识产权的货物中，实际转让给第三方的货物的数量，乘以如果不存在侵权行为，权利人本可以售出的每单位货物的利润金额；(b) 合理的许可费；或 (c) 以诸如至少侵权人本应支付的特许权使用费或费用等要素为基础的一笔总金额，前提是侵权人曾请求使用相关知识产权的授权。

Other Remedies

15. At least with respect to pirated copyright goods and counterfeit trademark goods, each Party shall provide that, in civil judicial proceedings, at the right holder’s request, that Party’s judicial authorities have the authority to order that the infringing goods be destroyed, except in exceptional circumstances, without compensation of any sort.

16. Each Party shall further provide that, in civil judicial proceedings, its judicial authorities have the authority to order that materials and implements that have been used in the manufacture or creation of such infringing goods, be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in a manner so as to minimise the risks of further infringements.

17. A Party may provide for the remedies described in paragraphs 15 and 16 to be carried out at the infringer’s expense.

Information related to Infringement

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

19. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of intellectual property rights, that Party’s judicial or other authorities have the authority to impose sanctions on a party, counsel, experts, or other persons subject to the court’s jurisdiction, for violation of judicial orders concerning the protection of confidential information produced or exchanged in connection with that proceeding.

其他救济措施

15. 至少就盗版版权商品和假冒商标商品而言，各缔约方应当规定，在民事诉讼程序中，应权利人的请求，该缔约方的司法当局有权下令销毁侵权商品，除非有特殊情况，否则无需任何补偿。

16. 各缔约方应当进一步规定，在民事诉讼程序中，其司法当局有权下令，对于在制造或制造此类侵权商品中使用的材料和工具，在不合理延迟和未经任何补偿的情况下，在商业渠道之外以尽量减少进一步侵权风险的方式予以销毁或处置。

17. 一方可规定，第15段和第16段所述的救济措施由侵权人承担费用。

与侵权相关的信息

18.在不损害各缔约方关于特权、信息来源保密性或个人数据处理的管理国内法的情况下，各缔约方应当规定，在涉及知识产权执行的民事诉讼程序中，该缔约方的司法当局有权，根据该缔约方的国内法，下令侵权人或，作为替代，被指控侵权人，向权利人或司法当局提供至少为收集证据目的的相关信息，该信息由该缔约方适用国内法规定的侵权人或被指控侵权人拥有或控制的信息。这些信息可包括有关参与侵权或被指控侵权任何方面的个人、有关侵权或被指控侵权商品或服务生产手段或分销渠道的信息，包括据称参与此类商品或服务生产和分销的第三方及其分销渠道的识别。

19. 各缔约方应当规定，在涉及知识产权执行的民事司法诉讼中，有关缔约方的司法或其他当局有权对受法院管辖的一方、律师、专家或其他人员实施制裁，因违反与该诉讼有关的保密信息保护司法命令而构成违法行为。

Provisional Measures

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

- (a) against a party or, if appropriate, a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of any intellectual property right from occurring, and in particular, to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce; and
- (b) to preserve relevant evidence in regard to the alleged infringement.

21. Each Party shall provide that its judicial authorities have the authority to adopt provisional measures *inaudita altera parte* if appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed. In proceedings conducted *inaudita altera parte*, each Party shall provide that Party's judicial authorities with the authority to act expeditiously on requests for provisional measures and to make a decision without undue delay.

22. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, that Party's judicial authorities have the authority to order the seizure or other taking into custody of suspect goods, and of materials and implements relevant to the act of infringement, and, at least for trademark counterfeiting, documentary evidence, either originals or copies thereof, relevant to the infringement.

23. Each Party shall provide that its authorities have the authority to require the applicant, with respect to provisional measures, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse. Each Party shall provide that such security or equivalent assurance does not unreasonably deter recourse to procedures for such provisional measures.

临时措施

20. 各缔约方应当规定，其司法当局有权下令采取迅速有效的临时措施：

- (a) 对一方或，如适当，对司法当局行使管辖权的第三方，以防止知识产权的侵权行为发生，并特别防止涉及知识产权侵权的商品进入商业渠道；以及
- (b) 保存关于指控侵权的相关证据。

21. 各缔约方应当规定其司法当局在适当情况下有权不听取对方意见采取临时措施，特别是在任何延迟可能导致权利人遭受不可弥补的损害，或存在证据被销毁的可证明风险的情况下。在不听取对方意见进行的诉讼程序中，各缔约方应当规定缔约方的司法当局有权迅速处理临时措施请求，并在不适当延迟的情况下作出决定。

22. 至少在版权或相关权利侵权和商标假冒的情况下，各缔约方应当规定，在民事诉讼程序中，缔约方的司法当局有权下令扣押或采取其他措施控制可疑货物，以及与侵权行为相关的材料和工具，并且至少在商标假冒的情况下，有权下令扣押与侵权相关的书面证据，无论是原件还是副本。

23. 各缔约方应当规定其当局有权要求申请人，就临时措施而言，提供任何合理可得证据，以使其确信申请人权利正在受到侵犯或此种侵犯即将发生，并责令申请人提供足够的担保或同等保证以保护被告并防止滥用。各缔约方应当规定此种担保或同等保证并未不合理地阻碍对临时措施程序的援用。

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

Article 16.14: Special Requirements Related to Border Measures

Scope of Border Measures

- 1. For the purposes of this Article, goods infringing an intellectual property right include goods that are subject to footnote 14 of Article 51 of the TRIPS Agreement.
- 2. The provisions in this Article may apply to in-transit²⁰ shipments or goods.
- 3. A Party may apply the provisions set forth in this Article to goods put on the market in another country by or with the consent of the right holder.

Provision of Information from the Right Holder

- 4. Each Party shall permit that Party’s competent authorities to request that a right holder supply relevant information to assist the competent authorities in taking the border measures referred to in this Article. A Party may also allow a right holder to supply relevant information to that Party’s competent authorities.

Ex Officio Action

- 5. Each Party shall adopt or maintain procedures with respect to import and export shipments under which that Party’s competent authorities may action upon their own initiative to suspend the release of, or to detain, goods suspected of infringing an intellectual property right.

²⁰ “In-transit “ means the movement of shipments or goods under customs procedures under which shipments or goods are:

- (a) transported under customs control from one customs office to another; or
- (b) transferred under customs control from the importing means of transport to the exporting means of transport within the area of one customs office which is the office of both importation and exportation.

24. 各缔约方可以规定，如果临时措施被撤销，如果因申请人的任何行为或不行为而失效，或者如果随后发现未发生知识产权的侵权，则司法当局根据被告的请求，有权责令申请人向被告提供适当的补偿，以弥补因这些措施造成的损害。

第十六条第十四条：与边境措施相关的特殊要求

边境措施的范围

- 1. 根据本条文的定义，侵犯知识产权的货物包括属于与贸易有关的知识产权协定第五十一条第14脚注所管辖的货物。
- 2. 本条文的规定可适用于在途²⁰ 货物或货物。
- 3. 一方可以将本条文的规定适用于由权利人或经权利人同意在另一国投放市场的货物。

权利人提供信息

- 4. 各缔约方应允许其主管当局请求权利人提供相关信息，以协助主管当局采取本条所述的边境措施。缔约方还允许权利人向其主管当局提供相关信息。

依职权行动

- 5. 各缔约方应当采取或维持有关进出口运输的程序，根据该程序，各缔约方的主管当局可以自行采取行动，暂停释放或扣押涉嫌侵犯知识产权的货物。

²⁰ “在途”是指根据海关程序运输的货物或货物的移动，其中货物或货物在以下情况下： (a) 在海关控制下从一家海关办公室运送到另一家海关办公室；或

(b) 在海关控制下从进口运输工具转移到出口运输工具，且该海关办公室既是进口地又是出口地。

Application by the Right Holder

6. Each Party shall adopt or maintain procedures with respect to import and export shipments under which a right holder may request the competent authorities of the Party providing the procedures to suspend the release of, or to detain, goods suspected of infringing an intellectual property right.

7. Each Party may provide that, if the applicant has abused the procedures described in this Article or if there is due cause, that Party’s competent authorities have the authority to deny, suspend, or void the application.

Security or Equivalent Assurance

8. Each Party shall provide that its competent authorities have the authority to require a right holder that requests the procedures provided for in paragraph 6 to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that this security or equivalent assurance does not unreasonably deter recourse to these procedures. A Party may provide that such security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of, or detention of, the goods in the event the competent authorities determine that the goods are not infringing.

Determination as to Infringement

9. Each Party shall adopt or maintain procedures by which that Party’s competent authorities may determine, within a reasonable period after the initiation of the procedures described in paragraphs 5, 6, and 7, if the goods suspected of infringing an intellectual property right infringe an intellectual property right.

Remedies

10. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination referred to in paragraph 9 that the goods are infringing. In cases where those goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in a manner so as to avoid harm to the right holder.

权利人的申请

6. 各缔约方应当采取或维持有关进出口运输的程序，根据该程序，权利人可以请求提供程序的缔约方的主管当局暂停释放或扣押涉嫌侵犯知识产权的货物。

7. 各缔约方可规定，如果申请人滥用了本条所述的程序或存在正当理由，则该缔约方的主管当局有权拒绝、暂停或撤销该申请。

担保或同等保证

8. 各缔约方应规定，其主管当局有权要求请求第6段规定的程序的权 利人提供合理担保或同等保证，以确保保护被告和主管当局，并防止滥用。各缔约方应规定，这种担保或同等保证不应不合理地阻碍对这些程序的救济途径。缔约方可规定，这种担保可以采取保证金的形式，以保证在主管当局确定货物不侵权的情况下，被告免受因货物释放或扣押的任何暂停而造成的任何损失或损害。

侵权认定

9. 各缔约方应当采用或维持程序，以便该缔约方的主管当局在启动第5、6和7段所述的程序后合理期限内，能够确定涉嫌侵犯知识产权的货物是否侵犯了知识产权。

救济措施

10. 各缔约方应当规定，其主管当局有权根据第9段所指的认定，下令销毁侵权商品。在那些商品未被销毁的情况下，各缔约方应当确保，除特殊情况外，那些商品以不损害权利人的方式，在商业渠道之外进行处理。

11. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed is not sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

12. A Party may provide that its competent authorities have the authority to impose administrative penalties following a determination referred to in paragraph 9 that the goods are infringing.

Fees

13. Each Party shall provide that an application fee, storage fee, or destruction fee to be assessed by that Party’s competent authorities in connection with the procedures described in this Article not be used to unreasonably deter recourse to these procedures.

Disclosure of Information

14. Each Party may, without prejudice to that Party’s law pertaining to the privacy or the confidentiality of information, authorise that Party’s competent authorities, where they have detained, or seized, goods suspected of infringing an intellectual property right, to provide a right holder who has filed a request for assistance with information about goods that could assist them in pursuing a remedy. This information may include the description and quantity of the goods, the name and address of the consignor, importer, exporter or consignee, and, if known, the country of origin of the goods and the name and address of the manufacturer of the goods.

Small Consignment and Personal Luggage

15. 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.

Article 16.15: Criminal Procedures and Remedies

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

11. 关于假冒商标商品，除非是特殊情况，否则仅移除非法附加的商标并不足以允许商品进入商业渠道。

12. 一方可以规定，其主管当局有权在根据第9段作出的关于货物涉嫌侵犯知识产权的裁决后，实施行政罚款。

Fees

13. 各缔约方应当规定，该缔约方主管当局在处理本文所述程序时，不得因申请费、仓储费或销毁费而不合理地阻碍对上述程序的救济途径。

信息披露

14. 各缔约方在不损害其关于信息隐私或保密的法律的前提下，可以授权其主管当局，在其扣押或查封涉嫌侵犯知识产权的货物时，向已提出协助请求的权利人提供有关货物信息，以协助其采取救济措施。此类信息可包括货物的描述和数量、发货人、进口商、出口商或收货人的名称和地址，以及（如知晓）货物的原产国和制造商的名称和地址。

小批量货物和个人行李

15. 各缔约方可将旅客个人行李中包含的非商业性质少量货物或小批量货物排除在本章适用范围之外。

第十六条第十五条：刑事程序和救济措施

1. 各缔约方应当规定刑事程序和处罚，至少适用于故意假冒商标或以商业规模侵犯版权或相关权利的案件。

2. Each Party shall provide for criminal procedures and penalties to be applied in accordance with that Party’s laws and regulations for the unauthorised copying of a cinematographic work, or any part thereof, from a performance in a movie theatre.

Penalties

3. For offences specified in paragraphs 1 and 2, each Party shall provide penalties that include imprisonment as well as monetary fines²¹ sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity.

Seizure, Forfeiture, and Destruction

4. With respect to the offences specified in paragraphs 1 and 2 for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence, and the assets derived from, or obtained directly or indirectly through, the alleged infringing activity.

5. If a Party requires the identification of items subject to seizure as a prerequisite for issuing an order referred to in paragraph 4, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure.

6. With respect to the offences specified in paragraphs 1 and 2 for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of all counterfeit trademark goods or pirated copyright goods. In cases where counterfeit trademark goods and pirated copyright goods are not destroyed, the competent authorities shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in a manner so as to avoid causing harm to the right holder. Each Party shall provide that the forfeiture or destruction of those goods occur without compensation of any sort to the infringer.

²¹ For greater certainty, there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

2. 各缔约方应当规定刑事程序和处罚，依据该缔约方法律法规，适用于未经授权复制电影作品或其任何部分的行为，该行为发生在电影院表演中。

处罚

3. 对于第1段和第2段中规定的违法行为，每一方应当提供包括监禁和罚款在内的处罚²¹，其金额应当足够高，以阻止未来的侵权行为，并与针对相应严重程度程度的犯罪所适用的处罚水平相一致。

扣押、没收和销毁

4. 对于一方提供刑事程序和处罚的、第1段和第2段中规定的违法行为，该方应当规定其主管当局有权下令扣押涉嫌假冒商标商品或盗版版权商品、实施所谓违法行为所使用的材料和工具、与所谓违法行为有关的书面证据，以及从所谓侵权行为中获得的或直接或间接通过所谓侵权行为获得的资产。

5. 如果一方要求将扣押物品的识别作为第4段所述命令的前提条件，该方不得要求对扣押物品进行超出识别扣押目的所必需的更详细描述。

6. 对于第1段和第2段中规定的、一方提供刑事程序和处罚的违法行为，该方应当规定其主管当局有权命令没收或销毁所有假冒商标商品或盗版版权商品。在假冒商标商品和盗版版权商品未被销毁的情况下，主管当局应当确保，除特殊情况外，这些商品以不损害权利人为目的的方式在商业渠道之外进行处理。每一方应当规定，这些商品的没收或销毁不得向侵权人提供任何形式的补偿。

²¹ 为了更明确起见，一方没有义务提供监禁和罚款可以同时施行的可能性。

7. With respect to the offences specified in paragraphs 1 and 2 for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of materials and implements predominantly used in the creation of counterfeit trademark goods or pirated copyright goods and, at least for serious offences, of the assets derived from, or obtained directly or indirectly through, the infringing activity. Each Party shall provide that the forfeiture or destruction of such materials, implements, or assets shall occur without compensation of any sort to the infringer.

8. With respect to the offences specified in paragraphs 1 and 2 for which a Party provides criminal procedures and penalties, that Party may provide that its judicial authorities have the authority to order:

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

Ex Officio Criminal Enforcement

9. Each Party shall provide that, in appropriate cases, that Party’s competent authorities may act upon their own initiative to initiate investigation or legal action with respect to the criminal offences specified in paragraphs 1 and 2 for which that Party provides criminal procedures and penalties.

Article 16.16: Special Measures against Copyright Infringers on the Internet

- 1. Each Party’s civil and criminal enforcement procedures to the extent set forth in this Chapter shall apply to infringement of copyright or related rights over digital networks, which may include the unlawful use of means of widespread distribution for infringing purposes.
- 2. A Party may provide, in accordance with that Party’s domestic law, that Party’s competent authorities with the authority to order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, if that right holder has filed a legally sufficient claim for copyright or related rights infringement, and if that information is being sought for the purpose of protecting or enforcing those rights.

7. 对于第1段和第2段中规定的、一方提供刑事程序和处罚的违法行为，该方应当规定其主管当局有权命令没收或销毁主要用于制造假冒商标商品或盗版版权商品的材料和工具，并且在至少对于严重违法行为的情况下，没收或销毁由侵权行为产生或直接或间接通过侵权行为获得的资产。每一方应当规定，这些材料、工具或资产的没收或销毁不得向侵权人提供任何形式的补偿。

8. 对于第1段和第2段中规定的、一方提供刑事程序和处罚的违法行为，该方可以规定其司法当局有权发出：

- (a) 扣押与涉嫌侵权行为直接或间接产生的资产价值相当的资产；以及 (b) 没收与侵权行为直接或间接产生的资产价值相当的资产。

主动刑事执法

9. 各缔约方应当规定，在适当情况下，该方的主管当局可以主动发起针对第1段和第2段中规定的、该方提供刑事程序和处罚的刑事违法行为的调查或法律行动。

第16.16条：针对互联网版权侵权者的特殊措施

- 1. 各缔约方在本章中规定的民事和刑事执法程序，应适用于数字网络上的版权或相关权利的侵权行为，这可能包括为侵权目的而非法使用广泛分发手段。
- 2. 一方可以根据其国内法，授权其主管当局迅速向权利人披露足以识别其账户据称被用于侵权行为的订阅者信息，前提是该权利人已就版权或相关权利侵权提出法律上充分的索赔，并且该信息是为了保护或执行这些权利的目的而寻求的。

3. Each Party shall endeavour to promote cooperative efforts within the business community to effectively address copyright or related rights infringement while preserving legitimate competition and, consistent with that Party’s domestic law, preserving fundamental principles such as freedom of expression, fair process, and privacy.
4. Each Party shall provide measures to curtail copyright and related right infringement on the Internet or other digital network.
5. Each Party shall implement these procedures in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce and, consistent with that Party’s domestic law, preserves fundamental principles such as freedom of expression, fair process, and privacy.²²

Article 16.17: Cooperation

1. To further the objectives in Article 16.1, the Parties agree to increase opportunities for cooperation in the field of intellectual property. Areas of cooperation may include:
- (a) patents, trade secrets, industrial design and related rights;
 - (b) trademarks and related rights, including geographical indications;
 - (c) copyright and related rights;
 - (d) intellectual property management, registration and exploitation;
 - (e) intellectual property protection in the digital environment to facilitate the growth and development of e-commerce;
 - (f) intellectual property education and awareness programmes;
 - (g) issues related to non-parties, particularly with respect to shared mutual concerns such as anti-counterfeiting and piracy;

²² For instance, without prejudice to a Party’s law, adopting or maintaining a regime providing for limitations on the liability of, or on the remedies available against, online service providers while preserving the legitimate interests of right holder.

3. 各缔约方应努力促进商界内的合作努力，以有效解决版权或相关权利侵权问题，同时保持合法竞争，并始终符合其国内法，保持言论自由、公平程序和隐私等基本原则。
4. 各缔约方应当提供措施，以遏制在互联网或其他数字网络上对版权及相关权利的侵权行为。
5. 各缔约方应当以避免产生合法活动障碍的方式实施这些程序，包括电子商务，并始终与该缔约方的国内法一致，保存言论自由、公平程序和隐私等基本原则。²²

第十六条第十七条：合作

1. 为进一步实现第十六条第1条的目标，缔约方同意增加知识产权领域的合作机会。合作领域可包括：
- (a) 专利、商业秘密、工业设计和相关权利； (b) 商标和相关权利，包括地理标志； (c) 版权和相关权利； (d) 知识产权管理、注册和利用； (e) 数字环境中的知识产权保护，以促进电子商务的增长和发展； (f) 知识产权教育和意识计划； (g) 与非缔约方相关的问题，特别是与打击假冒和海盗行为等共同关切相关的问题；

²² 例如，在不损害一方法律的情况下，采用或维持一种提供对在线服务提供者责任限制或针对在线服务提供者可获得的救济措施的限制的机制，同时保护权利人的合法利益。

- (h) issues related to the implementation of paragraph 6 of the Doha Declaration;
- (i) intellectual property and development; and
- (j) other issues of mutual interest concerning intellectual property.

2. This cooperation may include:

- (a) promoting the development of contacts among the Parties’ respective agencies which have an interest in the field of intellectual property;
- (b) exchanging information on:
 - (i) each Party’s policies, legislative provisions, activities, and experiences in the field of intellectual property;
 - (ii) the implementation of intellectual property systems aimed at promoting the efficient registration of intellectual property rights; and
 - (iii) appropriate initiatives to promote public awareness of intellectual property rights;
- (c) providing to the other Party, and updating as required, contact points for the authorities responsible for the enforcement of laws and regulations relevant to counterfeit and pirated goods;
- (d) exchanging experts to contribute to a better understanding of each Party’s intellectual property policies and experiences;
- (e) policy dialogue on intellectual property in non-parties and intellectual property initiatives in multilateral and regional forums;
- (f) facilitating exchanges among relevant academic and research institutions; and
- (g) those other activities as may be jointly determined by the Parties.

(h) 与多哈宣言第6段实施相关的问题； (i) 知识产权与发展； 以及 (j) 其他相互关心的知识产权问题。

2. 此合作可能包括：

(a) 促进各缔约方在知识产权领域的相关机构之间的联系发展； (b) 交换关于以下方面的信息： (i) 各缔约方在知识产权领域的政策、立法规定、活动和经验； (ii) 促进知识产权高效注册的知识产权制度的实施； 以及 (iii) 促进公众知识产权意识的适当举措； (c) 向另一方提供，并根据需要更新，负责执行与假冒和盗版商品相关的法律法规的当局的联系方式； (d) 交流专家，以增进对各方知识产权政策和经验的更好理解； (e) 在非缔约方和多边及区域论坛中的知识产权政策对话和知识产权倡议； (f) 促进相关学术和研究机构之间的交流； 以及 (g) 各方共同确定的其它活动。

Article 16.18: Committee on Intellectual Property

1. The Parties hereby establish a Committee on Intellectual Property composed of representatives of each Party with expertise in intellectual property.
2. The Committee shall be co-chaired by a representative of each Party.
3. The Committee shall:
 - (a) discuss topics relevant to the protection and enforcement of intellectual property rights covered by this Chapter, and any other relevant issues;
 - (b) provide a forum for consultations pursuant to Article 16.19; and
 - (c) oversee the Parties’ cooperation under this Chapter.
4. The Committee shall meet annually or as otherwise agreed.

Article 16.19: Consultations

1. Either Party may request consultations with the other Party regarding any actual or proposed measure or any other matter which that Party considers might negatively affect its intellectual property interests.
2. Upon a request pursuant to paragraph 1, the Parties agree to consult within the framework of the Committee to consider ways of reaching mutually satisfactory solutions. In doing so, the Parties shall:
 - (a) endeavour to provide sufficient information to enable a full examination of the matter; and
 - (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information.
3. If the Parties are unable to reach a mutually satisfactory solution pursuant to consultations under paragraph 2, either Party may refer the matter to the Commission.

第十六节：知识产权委员会

1. 各缔约方兹设立知识产权委员会，由各缔约方在知识产权领域的专家代表组成。
2. 该委员会应由各缔约方代表共同主持。
3. 该委员会应：
 - (a) 讨论与本章规定的知识产权权利的保护和执行相关的事项，以及任何其他相关事项；(b) 提供根据第十六节第19条进行磋商的场所；以及
 - (c) 监督各缔约方根据本章进行的合作。
4. 该委员会应每年召开一次或按其他方式商定。

第十六条第十九条：磋商

1. 任何一方可以就任何实际或拟议的措施或任何其他可能对其知识产权利益产生不利影响的任何事项，请求与另一方磋商。
2. 根据第1段的规定提出请求后，缔约方同意在委员会的框架内进行磋商，以考虑达成相互满意解决方案的方式。在此过程中，缔约方应：
 - (a) 努力提供足够的信息，以便对事项进行全面审查；以及 (b) 对在磋商过程中交换的任何机密或专有信息，以提供信息的方相同的方式进行处理。
3. 如果缔约方根据第2段的规定通过磋商无法达成相互满意的解决方案，任何一方都可以将事项提交给委员会。