

CHAPTER EIGHTEEN
INTELLECTUAL PROPERTY RIGHTS

第十八章 知识产权

ARTICLE 18.1: GENERAL PROVISIONS

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

International Agreements

2. Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TRIPS Agreement.

3. Each Party shall ratify or accede to the following agreements by the date this Agreement enters into force:
- (a) the *Patent Cooperation Treaty* (1970), as amended in 1979;
 - (b) the *Paris Convention for the Protection of Industrial Property* (1967) (the Paris Convention);
 - (c) the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (the Berne Convention);
 - (d) the *Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (1974);
 - (e) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (1989);
 - (f) the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1977), as amended in 1980;
 - (g) the *International Convention for the Protection of New Varieties of Plants* (1991);
 - (h) the *Trademark Law Treaty* (1994);¹
 - (i) the *World Intellectual Property Organization (WIPO) Copyright Treaty* (1996); and
 - (j) the *WIPO Performances and Phonograms Treaty* (1996).

¹ A Party may satisfy the obligation in Article 18.1.3(h) by ratifying or acceding to the *Singapore Treaty on the Law of Trademarks* (2006), provided that treaty has entered into force.

第18.1条：一般规定

1. 每一缔约方至少应使本章规定生效。

国际协议

2. 除第1.2条（与其他协议的关系）外，雙方确认其在《与贸易有关的知识产权协定》下对彼此现有的权利和义务。

3. 每一缔约方应在本协议生效之日前批准或加入以下协议：

- (a) 经1979年修订的《专利合作条约（1970年）》；(b) 《保护工业产权巴黎公约（1967年）》（《巴黎公约》）；(c) 《保护文学和艺术作品伯尔尼公约（1971年）》（《伯尔尼公约》）；(d) 《关于播送由人造卫星传播载有节目信号的公约（1974年）》；(e) 《商标国际注册马德里协定有关议定书（1989年）》；(f) 经1980年修订的《国际承认用于专利程序的微生物保存布达佩斯条约（1977年）》；(g) 《国际植物新品种保护公约（1991年）》；(h) 《商标法条约（1994年）》；¹(i) 《世界知识产权组织版权条约（1996年）》；以及(j) 《世界知识产权组织表演和录音制品条约（1996年）》。

¹ 缔约方可通过批准或加入《商标法新加坡条约（2006年）》来履行第18.1.3(h)条款的义务，前提是该条约已生效。

4. Each Party shall make all reasonable efforts to ratify or accede to the following agreements:

- (a) the *Patent Law Treaty* (2000);
- (b) the *Hague Agreement Concerning the International Registration of Industrial Designs* (1999); and
- (c) the *Singapore Treaty on the Law of Trademarks* (2006).

More Extensive Protection and Enforcement

5. A Party may provide more extensive protection for, and enforcement of, intellectual property rights under its law than this Chapter requires, provided that the more extensive protection does not contravene this Chapter.

National Treatment

6. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals² of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection³ and enjoyment of such intellectual property rights and any benefits derived from such rights. With respect to secondary uses of phonograms by means of analog communications, analog free over-the-air radio broadcasting, and analog free over-the-air television broadcasting, however, a Party may limit the rights of performers and producers of phonograms of the other Party to the rights its persons are accorded in the territory of the other Party.

7. A Party may derogate from paragraph 6 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, provided that such derogation is:

- (a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and

² For purposes of paragraphs 6 and 7 and Articles 18.2.14(a), and 18.6.1, a “national” of a Party shall include, in respect of the relevant right, any person (as defined in Article 1.4 (Definitions)), of that Party that would meet the criteria for eligibility for protection of that right provided for in the agreements listed in paragraph 3 and the TRIPS Agreement.

³ For purposes of paragraph 6, “protection” includes: (1) 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; and (2) the prohibition on circumvention of effective technological measures set out in Article 18.4.7 and the rights and obligations concerning rights management information set out in Article 18.4.8.

4. 每一缔约方应尽一切合理努力批准或加入下列协议：

- (a) 《专利法条约》（2000年）；(b) 《工业设计国际注册海牙协定》（1999年）；以及(c) 《商标法新加坡条约》（2006年）。

更广泛的保护与执法

5. 缔约方可依据其法律对知识产权提供比本章要求更广泛的保护和执法，但更广泛的保护不得违反本章规定。

国民待遇

6. 对于本章涵盖的所有知识产权类别，每一缔约方给予另一缔约方国民² 的待遇，在此类知识产权的保护³、享有及由此产生的任何利益方面，不得低于其给予本国国民的待遇。但对于通过模拟通信、模拟免费无线广播和模拟免费无线电视广播对录音制品的二次使用，缔约方可将另一缔约方表演者和录音制品制作者的权利限制在该另一缔约方领土内其国民所享有的权利范围内。

7. 缔约方可就第6款所述的司法和行政程序作出减损，包括要求另一缔约方的国民在其领土内指定送达程序地址或委任代理人，但此类减损须满足以下条件：

- (a) 为确保遵守与本章节不相抵触的法律法规所必需；且

² 就第6款、第7款以及第18.2.14(a)条和第18.6.1条而言，缔约方的“国民”应包括该缔约方在相关权利方面符合第3款所列协议及《与贸易有关的知识产权协定》规定的该权利保护资格标准的任何人（定义见第1.4条（定义））。

³ 就第6款而言，“保护”包括：(1) 影响知识产权权利的获取、享有、范围、维持和执法的事项，以及影响本章特别涵盖的知识产权权利使用的事项；及(2) 第18.4.7条规定的禁止规避有效的技术措施以及第18.4.8条规定的关于权利管理信息的权利和义务。

(b) not applied in a manner that would constitute a disguised restriction on trade.

8. Paragraph 6 does not apply to procedures provided in multilateral agreements to which either Party is a party concluded under the auspices of the WIPO in relation to the acquisition or maintenance of intellectual property rights.

Application of Agreement to Existing Subject Matter and Prior Acts

9. Except as it provides otherwise, including in Article 18.4.5, this Chapter gives rise to obligations in respect of all subject matter existing at the date this Agreement enters into force that is protected on that date in the territory of the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

10. Except as otherwise provided in this Chapter, including in Article 18.4.5, a Party shall not be required to restore protection to subject matter that on the date this Agreement enters into force has fallen into the public domain in the territory of the Party where the protection is claimed.

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

Transparency

12. Further to Article 21.1 (Publication), and with the object of making the protection and enforcement of intellectual property rights transparent, each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights are in writing and are published,⁴ or where publication is not practicable made publicly available, in its national language in such a manner as to enable governments and right holders to become acquainted with them.

ARTICLE 18.2: TRADEMARKS INCLUDING GEOGRAPHICAL INDICATIONS

1. Neither Party may require, as a condition of registration, that signs be visually perceptible, nor may either Party deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or scent.

2. Each Party shall provide that trademarks shall include certification marks. Each Party shall also provide that geographical indications are eligible for protection as trademarks.⁵

⁴ For greater certainty, a Party may satisfy the requirement in paragraph 12 to publish a law, regulation, or procedure by making it available to the public on the Internet.

⁵ For purposes of this Chapter, **geographical indications** means indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign (such as words, including geographical and personal names, as well as letters, numerals, figurative elements,

(b) 不得以构成变相的贸易限制的方式实施。

8. 第6款不适用于任一缔约方在世界知识产权组织主持下缔结的与知识产权取得或维持相关的多边协议中所规定的程序。

协议对现有客体及在先行为的适用

9. 除另有规定外（包括第18.4.5条），本章节对以下客体产生义务：在本协议生效之日已存在且在该日期于主张保护的缔约方领土内受保护的客体，或在该日期后符合或随后符合本章节保护标准的客体。

10. 除本章节另有规定外（包括第18.4.5条），缔约方无义务对在本协议生效之日已进入主张保护的缔约方领土公共领域的客体恢复保护。

11. 本章节不对本协议生效之日前发生的行为产生义务。

透明度

12. 为进一步落实第21.1条（公布），并为了使知识产权保护和执法具有透明度，每一缔约方应确保所有关于知识产权保护或执法的法律、法规和程序均以书面形式公布⁴，或在公布不可行时以本国语言公开提供，以便政府和权利持有人能够知悉。

第18.2条：商标，包括地理标志

1. 任何缔约方均不得将标志的视觉可感知性作为注册条件，也不得仅因商标由声音或气味构成而拒绝其注册。

2. 每一缔约方应规定商标应包括认证标志。每一缔约方还应规定地理标志有资格作为商标受到保护。⁵

⁴ 为进一步明确，缔约方可通过在互联网上向公众提供法律、法规或程序来满足第12段中关于公布的要求。

⁵ 就本章而言，地理标志系指识别一货物来源于一缔约方领土或该领土内一地区或地方的标志，该货物的特定质量、声誉或其他特性主要归因于其地理来源。任何标志（例如文字，包括地理名称和人名，以及字母、数字、图形要素，

3. Each Party shall ensure that its measures mandating the use of the term customary in common language as the common name for a good or service (common name), including, *inter alia*, requirements concerning the relative size, placement or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such good or service.

4. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs, including geographical indications, at least for goods or services that are identical or similar to those goods or services in respect of which the owner’s trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign, including a geographical indication, for identical goods or services, a likelihood of confusion shall be presumed.

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

6. Neither Party may 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. Additionally, neither Party may deny remedies or relief with respect to well-known marks solely because of the lack of:

- (a) a registration;
- (b) inclusion on a list of well-known marks; or
- (c) prior recognition of the mark as well-known.

7. Article 6bis of the Paris Convention shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark,⁶ 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.

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

and colors, including single colors) or combination of signs, in any form whatsoever, shall be eligible to be a geographical indication. “Originating” in this Chapter does not have the meaning ascribed to that term in Article 1.4 (Definitions).

⁶ For purposes of determining whether a mark is well-known, neither Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

3. 每一缔约方应确保其要求使用通用语言中惯用术语作为商品或服务通用名称（通用名称）的措施，包括但不限于关于商标相对于通用名称的相对大小、位置或使用样式的要求，不会损害用于此类商品或服务的商标的使用或效力。

4. 每一缔约方应规定，注册商标的所有者应享有专有权，以防止所有未经所有者同意的第三方在贸易过程中使用与所有者注册商标所涉商品或服务相同或类似的标志，包括地理标志，只要此类使用会导致混淆可能性。在使用相同标志（包括地理标志）于相同商品或服务的情况下，应推定存在混淆可能性。

5. 每一缔约方可对商标所授予的权利规定有限例外，例如描述性术语的合理使用，只要此类例外考虑了商标所有者和第三方的合法利益。

6. 任何一方均不得以商标已在该方领土或另一管辖权区域内注册作为确定该商标为驰名商标的条件。此外，任何一方均不得仅因缺乏以下情形而拒绝为驰名商标提供补救措施或救济：

- (a) 注册；(b) 列入驰名商标名录；或 (c) 先前对该商标作为驰名商标的认可

7. 《巴黎公约》第六条之二应经必要修改后适用于与驰名商标所标识的商品或服务不相同或不类似的商品或服务，⁶无论该商标是否注册，只要在该等商品或服务上使用该商标会表明这些商品或服务与商标所有者之间存在联系，且该使用可能损害商标所有者的利益。

8. 每一缔约方应采取适当措施，拒绝或撤销注册并禁止使用与驰名商标相同或近似的商标或地理标志，用于相关商品或服务，如果该

以及颜色（包括单一颜色）或标志组合，无论以何种形式，均应有资格成为地理标志。本“章节”中的“原产”一词不具有第一条第四款（定义）中赋予该词的含义。

⁶ 为确定某商标是否为驰名商标，任何缔约方均不得要求该商标的声誉超出通常涉及相关商品或服务的公众范围。

trademark or geographical indication is likely to cause confusion, or to cause mistake, or to deceive or risk associating the trademark or geographical indication with the owner of the well-known trademark, or constitutes unfair exploitation of the reputation of the well-known trademark.

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

- (a) a requirement to provide to the applicant a communication in writing, which may be provided electronically, of the reasons for a refusal to register a trademark;
- (b) an opportunity for the applicant to respond to communications from the trademark authorities, to contest an initial refusal, and to appeal judicially a final refusal to register;
- (c) an opportunity for interested parties to oppose a trademark application and to seek cancellation of a trademark after it has been registered; and
- (d) a requirement that decisions in opposition and cancellation proceedings be reasoned and in writing. Written decisions may be provided electronically.

10. Each Party shall provide a:

- (a) system for the electronic application for, and electronic processing, registering, and maintenance of, trademarks; and
- (b) publicly available electronic database, including an online database, of trademark applications and registrations.

11. Each Party shall provide that:

- (a) each registration and publication that concerns a trademark application or registration and that indicates goods or services shall indicate the goods or services by their names, grouped according to the classes of the classification established by the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* (1979), as revised and amended (Nice Classification); and
- (b) goods or services may not be considered as being similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification.

商标或地理标志的使用可能导致混淆、错误、欺骗或使该商标或地理标志与驰名商标所有者产生关联风险，或构成对驰名商标声誉的不当利用。

9. 每一缔约方应提供商标注册制度，该制度应包括：

- (a) 要求以书面形式（可通过电子方式提供）向申请人提供拒绝商标注册的理由；(b) 为申请人提供回应商标主管机关通信、对初步驳回提出异议以及对最终驳回注册决定提起司法上诉的机会；(c) 为利害关系方提供对商标申请提出异议及在商标注册后寻求商标撤销的机会；以及(d) 要求异议和撤销程序中的决定须说明理由并以书面形式作出。书面决定可通过电子方式提供。

10. 每一缔约方应提供：

- (a) 商标电子申请、电子处理、注册及维护的系统；及(b) 包含商标申请和注册信息的公开电子数据库（包括在线数据库）。

11. 每一缔约方应规定：

- (a) 每项涉及商标申请的注册和出版
注册并标明商品或服务的申请，应按照《关于商标注册用商品和服务国际分类的尼斯协议》（1979年）及其修订文本（尼斯分类）所确立的分类类别，以商品或服务的名称分组标明；且
- (b) 商品或服务不得被视为彼此相似
仅以在任何注册或出版中它们出现在尼斯分类的同一类别为由，不得认为商品或服务彼此相似。反之，每一缔约方应规定，仅以在任何注册或出版中它们出现在尼斯分类的不同类别为由，不得认为商品或服务彼此不相似。

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

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

14. If a Party provides the means to apply for protection or petition for recognition of geographical indications, through a system of protection of trademarks or otherwise, it shall, with respect to such applications and petitions (as relevant to the means chosen by the Party):

- (a) accept those applications and petitions without requiring intercession by a Party on behalf of its nationals;
 - (b) process those applications and petitions with a minimum of formalities;
 - (c) ensure that its regulations governing filing of those applications and petitions are readily available to the public and set out clearly the procedures for these actions;
 - (d) make available contact information sufficient to allow the general public to obtain guidance concerning the procedures for filing applications and petitions and the processing of those applications and petitions in general; and to allow applicants, petitioners, or their representatives to ascertain the status of, and to obtain procedural guidance concerning, specific applications and petitions; and
 - (e) ensure that applications and petitions for geographical indications are published for opposition, and provide procedures for opposing geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel a registration resulting from an application or a petition.
15. (a) Each Party shall provide that each of the following shall be grounds for refusing protection or recognition of, and for opposition and cancellation of, a geographical indication:
- (i) the geographical indication is likely to cause confusion with a trademark that is the subject of a good faith pending application or registration in the Party's territory and that has a priority date that predates the protection or recognition of the geographical indication in that territory;
 - (ii) the geographical indication is likely to cause confusion with a trademark, the rights to which have been acquired in the Party's

12. 每一缔约方应规定，商标的首次注册和每次续展注册的期限应不少于十年。

13. 任何缔约方均不得要求进行商标许可备案以确立许可的有效性、主张商标中的任何权利或用于其他目的。

14. 如一缔约方通过商标保护制度或其他方式提供申请保护或请求承认地理标志的途径，则该缔约方应针对此类申请和请求（与缔约方选择的途径相关）：

(a) 接受这些申请和请求，无需缔约方代表其国民进行干预；(b) 以最少的形式要求处理这些申请和请求；(c) 确保其管理这些申请和请求的申请管理法规便于公众获取，并明确列出这些行动的程序；(d) 提供足够的联系信息，使公众能够获得关于提交申请和请求的程序以及这些申请和请求的一般处理的指导；并使申请人、请求人或其代表能够确定特定申请和请求的状态，并获得关于这些申请和请求的程序指导；以及(e) 确保地理标志的申请和请求公布以供异议，并提供对作为申请或请求主题的地理标志提出异议的程序。每一缔约方还应提供撤销因申请或请求而产生的注册的程序。15. (a) 每一缔约方应规定，以下每一项应作为拒绝地理标志的保护或承认，以及对其提出异议和撤销的理由：(i) 该地理标志可能与在缔约方领土内善意待决申请或注册的商标，且其优先日期早于该领土内地理标志的保护或承认的商标造成混淆；(ii) 该地理标志可能与在缔约方领土内通过善意使用已获得权利的商标造成混淆，且其优先日期早于该领土内地理标志的保护或承认；以及

territory through use in good faith, that has a priority date that predates the protection or recognition of the geographical indication in that territory; and

(iii) the geographical indication is likely to cause confusion with a trademark that has become well known in the Party’s territory and that has a priority date that predates the protection or recognition of the geographical indication in that territory.

(b) For purposes of subparagraph (a), the date of protection of the geographical indication in a Party’s territory shall be:

(i) in the case of protection or recognition provided as a result of an application or petition, the date of the application or petition; and

(ii) in the case of protection or recognition provided through other means, the date of protection or recognition under the Party’s laws.

ARTICLE 18.3: DOMAIN NAMES ON THE INTERNET

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

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

ARTICLE 18.4: COPYRIGHT AND RELATED RIGHTS

1. Each Party shall provide⁷ that authors, performers, and producers of phonograms⁸ have the right to authorize or prohibit⁹ all reproductions of their works, performances,¹⁰

⁷ The Parties reaffirm that it is a matter for each Party’s law to prescribe that works and phonograms shall not be protected by copyright unless they have been fixed in some material form.

⁸ “Authors,” “performers,” and “producers of phonograms” in this Chapter refer also to any successors in title.

⁹ With respect to copyrights and related rights, the “right to authorize or prohibit” for purposes of this Chapter refers to exclusive rights.

¹⁰ With respect to copyright and related rights, a **performance** for purposes of this Chapter means a performance fixed in a phonogram unless otherwise specified.

领土内通过善意使用已获得权利的商标造成混淆，且其优先日期早于该领土内地理标志的保护或承认；以及

(iii) 该地理标志可能与在缔约方领土内已广为人知的商标产生混淆，且该商标的优先日期早于该地理标志在该领土内的保护或承认日期。

(b) 就(a)项而言，地理标志在缔约方领土内的保护日期应为：

(i) 对于因申请或请求而提供的保护或承认，指该申请或请求的日期；及(ii) 对于通过其他方式提供的保护或承认，指根据缔约方法律的保护或承认日期。

第18.3条：互联网域名

1. 为解决商标网络盗版问题，每一缔约方应要求其国家代码顶级域名（ccTLD）管理机构根据《统一域名争议解决政策》确立的原则，提供适当的争议解决程序。

2. 每一缔约方应要求其ccTLD管理机构向公众提供在线公开访问的、关于域名注册人的可靠且准确的联系信息数据库。

第18.4条：版权及相关权利

1. 每一缔约方应规定⁷ 作者、表演者和录音制品制作者⁸ 有权许可或禁止⁹ 对其作品、表演、¹⁰

⁷ 雙方重申，作品和录音制品除非以某种物质形式固定，否则不受版权保护，这属于每一缔约方法律规定的范畴。⁸ 本章中的“作者”、“表演者”和“录音制品制作者”亦指任何权利继承人。⁹ 关于版权及相关权利，本章所指的“授权或禁止权”即专有权利。¹⁰ 关于版权及相关权利，本章所指的表演系指固定在录音制品中的表演，除非另有规定。

and phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form).¹¹

2. Each Party shall provide to authors, performers, and producers of phonograms the right to authorize or prohibit the making available to the public of the original and copies¹² of their works, performances, and phonograms through sale or other transfer of ownership.

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

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

- (a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author’s death; and
- (b) on a basis other than the life of a natural person, the term shall be:
 - (i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram; or
 - (ii) failing such authorized publication within 25 years from the creation of the work, performance, or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram.

5. Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, *mutatis mutandis*, to the subject matter, rights, and obligations in this Article and Articles 18.5 and 18.6.

¹¹ Each Party shall confine limitations or exceptions to the rights described in paragraph 1 to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder. For greater certainty, each Party may adopt or maintain limitations or exceptions to the rights described in paragraph 1 for fair use, as long as any such limitation or exception is confined as stated in the previous sentence.

¹² As used in paragraph 2, “copies” and “original and copies”, being subject to the right of distribution in this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects.

和录音制品以任何方式或形式进行的全部复制，无论是永久还是临时的（包括以电子形式的临时存储）。¹¹

2. 每一缔约方应向作者、表演者和录音制品制作者授予授权或禁止通过销售或其他所有权转让方式向公众提供其作品、表演和录音制品的原件和复制件¹²的权利。

3. 为确保作者权利与表演者和录音制品制作者权利之间不形成等级关系，每一缔约方应规定：当需要同时获得录音制品中体现的作品作者以及拥有该录音制品权利的表演者或制作者的授权时，对作者授权的需求不因同时需要表演者或制作者的授权而消失。同样，每一缔约方应规定：当需要同时获得录音制品中体现的作品作者以及拥有该录音制品权利的表演者或制作者的授权时，对表演者或制作者授权的需求不因同时需要作者的授权而消失。

4. 每一缔约方应规定，在计算作品（包括摄影作品）、表演或录音制品的保护期限时：

- (a) 以自然人的生命为基础计算的，该期限应不少于作者有生之年加死后70年；以及 (b) 不以自然人的生命为基础计算的，该期限应为：(i) 自作品、表演或录音制品首次授权出版的日历年年底起不少于70年；或 (ii) 若自作品、表演或录音制品创作完成起25年内未授权出版的，自作品、表演或录音制品创作的日历年年底起不少于70年。

5. 每一缔约方应经必要修改后适用《伯尔尼公约》第18条和《TRIPS协定》第14.6条，以适用于本条及第18.5条和第18.6条中的标的、权利和义务。

¹¹ 每一缔约方应将第1款所述权利的限制或例外限于某些特殊情况，这些情况不得与作品、表演或录音制品的正常利用相冲突，也不得无理损害权利持有人的合法利益。为进一步明确，只要任何此类限制或例外符合前句所述条件，每一缔约方可为合理使用而采取或维持第1款所述权利的限制或例外。

¹² 如第2款所用，“复制件”和“原件和复制件”，作为本款发行权的客体，仅指可作为有形物体投入流通的固定复制件。

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

- (a) may freely and separately transfer that right by contract; and
 - (b) by virtue of a contract, including contracts of employment underlying the creation of works, performances, and phonograms, shall be able to exercise that right in that person’s own name and enjoy fully the benefits derived from that right.
7. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:
- (i) knowingly, or having reasonable grounds to know, circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter; or
 - (ii) manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products, or components, or offers to the public or provides services, that:
 - (A) are promoted, advertised, or marketed by that person, or by another person acting in concert with, and with the knowledge of, that person, for the purpose of circumvention of any effective technological measure;
 - (B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or
 - (C) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure,

shall be liable and subject to the remedies set out in Article 18.10.13.¹³
Each Party shall provide for criminal procedures and penalties to be applied

¹³ In addition, each Party shall provide that any person who, unknowingly and without reasonable grounds to know, circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter shall be liable and subject at least to the remedies set out in subparagraphs (a), (c), and (d) of Article 18.10.13.

6. 每一缔约方应规定，对于版权及相关权利，任何取得或持有作品、表演或录音制品中任何经济权利的人：

- (a) 可通过合同自由且单独转让该权利；且 (b) 凭借合同（包括作为作品、表演和录音制品创作基础的雇佣合同），应能以该人自身名义行使该权利，并充分享有该权利产生的利益。
7. (a) 为针对作者、表演者和录音制品制作者在行使其权利时使用并限制对其作品、表演和录音制品实施未经授权行为的有效技术措施之规避行为，提供充分的法律保护和有效的法律救济，每一缔约方应规定，任何人若：
- (i) 明知或应知未经授权规避了控制访问受保护的作品、表演、录音制品或其他主题的任何有效技术措施；或 (ii) 制造、进口、分销、向公众提供或以其他方式交易设备、产品或组件，或向公众提供或提供服务，且该等设备、产品或组件或服务：
- (A) 由该人或与该人共谋且该人知情的他人，为规避任何有效技术措施之目的而推广、广告或营销；(B) 除规避任何有效技术措施外，仅具有有限的商业重要目的或用途；或 (C) 主要为促成或便利规避任何有效技术措施而设计、生产或实施，

应承担责任的约束。每一缔约方应规定适用的刑事程序和处罚。¹³

¹³ 此外，每一缔约方应规定，任何人在不知情且无合理理由知道的情况下，未经授权规避控制访问受保护的作品、表演、录音制品或其他主题的有效技术措施，应承担责任的约束。

when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities. Such criminal procedures and penalties shall include the application to such activities of the remedies and authorities listed in subparagraphs (a), (b), and (e) of Article 18.10.27 as applicable to infringements, *mutatis mutandis*.

- (b) In implementing subparagraph (a), neither Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measures implementing subparagraph (a).
- (c) Each Party shall provide that a violation of a measure implementing this paragraph is a separate cause of action, independent of any infringement that might occur under the Party’s law on copyright and related rights.
- (d) Each Party shall confine exceptions and limitations to measures implementing subparagraph (a) to the following activities, which shall be applied to relevant measures in accordance with subparagraph (e):¹⁴
 - (i) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in those activities, for the sole purpose of achieving interoperability of an independently created computer program with other programs;
 - (ii) noninfringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfixed performance, or display of a work, performance, or phonogram and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of research consisting of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;
 - (iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a

¹⁴ Either Party may request consultations with the other Party to consider how to address, under subparagraph (d), activities of a similar nature that a Party identifies after the date this Agreement enters into force.

当发现任何人（非营利图书馆、档案馆、教育机构或公共非商业广播实体除外）故意为获取商业优势或私人经济利益而从事任何上述活动时。此类刑事程序和处罚应包括对上述活动适用第18.10.27条(a)、(b)和(e)项所列的补救措施和当局，经必要修改后适用于侵权行为。

- (b) 在实施(a)项时，任何缔约方均无义务要求消费电子产品、电信产品或计算产品的设计或零部件设计与选择必须对特定技术措施作出响应，只要该产品未以其他方式违反实施(a)项的任何措施。
- (c) 每一缔约方应规定，违反本款实施措施的行为构成独立的诉讼理由，不依赖于该缔约方版权及相关权利法律下可能发生的任何侵权行为。
- (d) 每一缔约方应将实施(a)项措施的例外和限制限定于以下活动，并应根据(e)项规定适用于相关措施：¹⁴
 - (i) 对合法获取的计算机程序复制件进行的非侵权逆向工程活动，且该活动系善意针对该计算机程序中从事活动者不易获得的特定元素，唯一目的是实现独立创作的计算机程序与其他程序的互操作性；
 - (ii) 由合法获得作品、表演或录音制品的复制件、未固定的表演或展示，并已善意努力获取此类活动授权的合格研究人员，在仅为识别和分析信息加扰与解扰技术缺陷和漏洞的研究所需范围内，开展的非侵权善意活动；
 - (iii) 在技术、产品、服务或设备中包含一个组件或部件，其唯一目的是防止未成年人访问不适当的在线内容，而该

¹⁴ 任一缔约方可请求与另一缔约方进行磋商，以考虑如何根据(d)项处理本协议生效后缔约方发现的类似性质活动。

	technology, product, service, or device that itself is not prohibited under the measures implementing subparagraph (a)(ii);	技术、产品、服务或设备本身并未根据实施(a)(ii)项的措施被禁止；
(iv)	noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network;	(iv) 由计算机、计算机系统或计算机网络的所有者授权，仅出于测试、调查或纠正该计算机、计算机系统或计算机网络安全性的非侵权善意活动；
(v)	noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work;	(v) 仅出于识别和禁用未披露的个人识别信息收集或传播能力而进行的非侵权活动，这些信息以不影响任何人访问任何作品能力的方式反映自然人的在线活动；
(vi)	lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes;	(vi) 由政府雇员、代理人或承包商为执法、情报、基本安全或类似政府目的而合法授权的活动；
(vii)	access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram not otherwise available to it, for the sole purpose of making acquisition decisions; and	(vii) 非营利图书馆、档案馆或教育机构为仅作出采购决策之目的，访问其原本无法获得的作品、表演或录音制品；及
(viii)	noninfringing uses of a work, performance, or phonogram in a particular class of works, performances, or phonograms when an actual or likely adverse impact on those noninfringing uses is demonstrated in a legislative or administrative proceeding by substantial evidence, provided that any limitation or exception adopted in reliance on this clause shall have effect for a renewable period of not more than three years from the date the proceeding concludes.	(viii) 当立法或行政程序中以实质性证据证明对特定类别作品、表演或录音制品的非侵权使用产生实际或可能的不利影响时，对该类作品、表演或录音制品的非侵权使用；但依据本条款采纳的任何限制或例外，其有效期自程序结束之日起不得超过三年的可续期。
(e)	The exceptions and limitations to measures implementing subparagraph (a) for the activities set forth in subparagraph (d) may only be applied as follows, and only to the extent that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:	(e) 针对(a)项所述措施对(d)项所列活动的例外和限制，仅可在以下情况下适用，且以不损害法律保护的充分性或针对规避有效的技术措施的法律救济的有效性为限：
(i)	Measures implementing subparagraph (a)(i) may be subject to exceptions and limitations with respect to each activity set forth in subparagraph (d).	(i) 实施(a)(i)项的措施可针对(d)项所列每项活动适用例外和限制。
(ii)	Measures implementing subparagraph (a)(ii), as they apply to effective technological measures that control access to a work, performance, or phonogram, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (d)(i), (ii), (iii), (iv), and (vi).	(ii) 实施(a)(ii)项的措施若适用于控制访问作品、表演或录音制品的有效的技术措施，则可针对(d)(i)、(ii)、(iii)、(iv)和(vi)项所列活动适用例外和限制。

- (iii) Measures implementing subparagraph (a)(ii), as they apply to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (d)(i) and (vi).
- (f) **Effective technological measure** means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright or any rights related to copyright.

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

- (a) Each Party shall provide that any person who without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright or related right,
 - (i) knowingly removes or alters any rights management information;
 - (ii) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or
 - (iii) distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority,

shall be liable and subject to the remedies set out in Article 18.10.13. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities. These criminal procedures and penalties shall include the application to such activities of the remedies and authorities listed in subparagraphs (a), (b), and (e) of Article 18.10.27 as applicable to infringements, *mutatis mutandis*.

- (b) Each Party shall confine exceptions and limitations to measures implementing subparagraph (a) to lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes.

(iii) 实施(a)(ii)项的措施若适用于保护任何版权或任何与版权相关的权利的有效技术措施，则可针对(d)(i)和(vi)项所列活动适用例外和限制。

(f) 有效的技术措施指在正常运行过程中控制对受保护的作品、表演、录音制品或其他受保护的客体的访问，或保护任何版权或任何与版权相关的权利的任何技术、设备或组件。

8. 为提供充分有效的法律救济以保护权利管理信息：

(a) 每一缔约方应规定，任何人未经授权，且明知或（就民事救济而言）有合理理由知道其行为会诱发、促成、便利或掩盖任何版权或相关权利的侵权，

(i) 故意移除或更改任何权利管理信息；(ii) 明知权利管理信息未经授权被移除或更改，仍分發或为分發而进口该权利管理信息；或(iii) 明知权利管理信息未经授权被移除或更改，仍分發、为分發而进口、广播、向公众传播或提供作品、表演或录音制品的复制件，

应承担责任并受到第18.10.13条规定的补救措施的约束。每一缔约方应规定，当非营利图书馆、档案馆、教育机构或公共非商业广播实体以外的任何人被认定出于商业优势或私人经济利益的目的故意从事上述任何活动时，应适用刑事程序和处罚。这些刑事程序和处罚应包括将第18.10.27条(a)、(b)和(e)项所列适用于侵权行为的补救措施和当局经必要修改后适用于此类活动。

(b) 每一缔约方应将例外和限制仅限于政府雇员、代理人或承包商为执法、情报、基本安全或类似政府目的而实施的合法授权活动所采取的措施，以落实(a)项。

- (c) **Rights management information** means:
- (i) information that identifies a work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;
 - (ii) information about the terms and conditions of the use of the work, performance, or phonogram; or
 - (iii) any numbers or codes that represent such information,

when any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance, or phonogram to the public.

- (d) For greater certainty, nothing in this paragraph shall be construed to obligate a Party to require the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the work, performance, or phonogram, or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

9. Each Party shall provide appropriate laws, orders, regulations, government-issued guidelines, or administrative or executive decrees providing that its central government agencies not use infringing computer software and other materials protected by copyright or related rights and only use computer software and other materials protected by copyright or related rights as authorized by the relevant license. These measures shall provide for the regulation of the acquisition and management of software and other materials for government use that are protected by copyright or related rights.

10. (a) With respect to this Article and Articles 18.5 and 18.6, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.
- (b) Notwithstanding subparagraph (a) and Article 18.6.3(b), neither Party may permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal.¹⁵

¹⁵ For purposes of subparagraph (b) and for greater certainty, retransmission within a Party’s territory over a closed, defined, subscriber network that is not accessible from outside the Party’s territory does not constitute retransmission on the Internet.

- (c) 权利管理信息指：
- (i) 识别作品、表演或录音制品的信息；作品之作者、表演之表演者或录音制品之制作者；或作品、表演或录音制品中任何权利的所有者；(ii) 关于使用作品、表演或录音制品的条款和条件的信息；或
 - (iii) 代表此类信息的任何数字或代码，

当上述任何一项附于作品、表演或录音制品的复制件上，或在作品、表演或录音制品向公众传播或提供时出现。

- (d) 为明确起见，本款任何内容不得解释为要求缔约方强制作品、表演或录音制品中任何权利的所有者将权利管理信息附加于作品、表演或录音制品的复制件上，或使权利管理信息在作品、表演或录音制品向公众传播时出现。

9. 每一缔约方应制定适当的法律、命令、法规、政府发布的指南或行政或执行法令，规定其中央政府机构不得使用侵权计算机软件及其他受版权或相关权保护的材料，并仅使用经相关许可授权的受版权或相关权保护的计算机软件及其他材料。这些措施应规范受版权或相关权保护的软件及其他材料供政府使用的获取和管理。

10. (a) 关于本条及第18.5条和第18.6条，每一缔约方应将专有权利的限制或例外限于某些特殊情况，这些情况不与作品、表演或录音制品的正常利用相冲突，且不会无理损害权利持有人的合法利益。
- (b) 尽管有(a)项及第18.6.3(b)条的规定，任何缔约方均不得允许未经信号内容权利持有人或信号（如有）权利持有人授权，在互联网上转播电视信号（无论是地面、有线还是卫星信号）。¹⁵

¹⁵ 就(b)项而言，并为进一步明确，在一缔约方领土内通过封闭、定义、订阅网络进行的转播，若无法从该缔约方领土外访问，则不构成互联网上的转播。

ARTICLE 18.5: COPYRIGHT

Without prejudice to Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii), and 14*bis* of the Berne Convention, each Party shall provide to authors the exclusive right to authorize or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

ARTICLE 18.6: RELATED RIGHTS

1. With respect to the rights accorded under this Chapter to performers and producers of phonograms, each Party shall:
- (a) accord those rights to the performers and producers of phonograms who are nationals of the other Party; and

(b) accord those rights with respect to performances and phonograms that are first published or first fixed¹⁶ in the territory of the other Party.¹⁷
2. Each Party shall provide to performers the right to authorize or prohibit:
- (a) the broadcasting and communication to the public of their unfixed performances, except where the performance is already a broadcast performance; and

(b) the fixation of their unfixed performances.
3. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting and any communication to the public of their performances or phonograms, by wire or wireless means, including the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.
- (b) Notwithstanding subparagraph (a) and Article 18.4.10, the application of this right to analog transmissions and free over-the-air broadcasts, and exceptions or limitations to this right for such activity, shall be a matter of each Party’s law.

¹⁶ For purposes of Article 18.6, “fixation” includes the finalization of the master tape or its equivalent.

¹⁷ With respect to the protection of phonograms, a Party may apply the criterion of fixation instead of the criterion of publication.

第18.5条：版权

在不影响《伯尔尼公约》第11条(1)(ii)、第11条之二(1)(i)和(ii)、第11条之三(1)(ii)、第14条(1)(ii)以及第14条之二规定的前提下，每一缔约方应授予作者专有权，以授权或禁止通过有线或无线方式（包括以公众成员可自行选择地点和时间访问作品的方式）向公众传播其作品。

第18.6条：相关权利

1. 关于本章授予表演者和录音制品制作者的权利，每一缔约方应：
- (a) 将这些权利授予属于另一缔约方国民的表演者和录音制品制作者；以及

(b) 将这些权利授予首次出版或首次固定¹⁶ 于另一缔约方领土¹⁷的表演和录音制品。
2. 每一缔约方应授予表演者授权或禁止 t:
- (a) 其未固定的表演的广播和向公众传播，除非该表演已经是广播表演；以及

(b) 其未固定的表演的固定。
3. (a) 每一缔约方应授予表演者和录音制品制作者授权或禁止通过有线或无线方式广播和任何向公众传播其表演或录音制品的权利，包括以公众成员可从其个人选定的地点和时间访问的方式向公众提供这些表演和录音制品。(b) 尽管有(a)项和第18.4.10条的规定，本权利对模拟传输和免费空中广播的适用，以及对此类活动本权利的例外或限制，应属于每一缔约方法律的事项。

¹⁶ 对于公就第18.6条（条款）而言，“固定”包括母带或其等效物的最终确定。

¹⁷ 关于录音制品的保护，缔约方可采用固定标准而非出版标准。

- (c) Each Party may adopt limitations to this right in respect of other noninteractive transmissions in accordance with Article 18.4.10, provided that the limitations do not prejudice the right of the performer or producer of phonograms to obtain equitable remuneration.
4. Neither Party may subject the enjoyment and exercise of the rights of performers and producers of phonograms provided for in this Chapter to any formality.
5. For purposes of this Article and Article 18.4, the following definitions apply with respect to performers and producers of phonograms:
- (a) **broadcasting** means the transmission to the public by wireless means or satellite of sounds or sounds and images, or representations thereof, including wireless transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organization or with its consent; “broadcasting” does not include transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public;
- (b) **communication to the public** of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;
- (c) **fixation** means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;
- (d) **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;
- (e) **phonogram** means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;
- (f) **producer of a phonogram** means the person who, or the legal entity which, takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and
- (g) **publication** of a performance or a phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.

- (c) 每一缔约方可根据第18.4.10条对其他非交互式传输采用本权利的限制，只要这些限制不损害表演者或录音制品制作者获得公平报酬的权利。
4. 任何缔约方不得对本章节规定的表演者和录音制品制作者权利的享有和行使附加任何手续。
5. 就本条款和第18.4条而言，以下定义适用于表演者和录音制品制作者：
- (a) 广播指通过无线手段向公众进行的传输
卫星传输的声音或声音与图像，或其表现形式，包括由广播组织或经其同意向公众提供解密手段的加密信号无线传输；“广播”不包括通过计算机网络的传输，也不包括公众成员可自行选择接收时间和地点的任何传输；
- (b) 表演或录音制品向公众传播指通过除广播外的任何媒介向公众传输表演的声音或录音制品中固定的声音或其表现物；
通过除广播以外的任何媒介，向公众传输表演的声音或录音制品中固定的声音或其表现；
- (c) 固定指声音或其表现形式的体现，
可通过设备感知、复制或传播；
- (d) 表演者指演员、歌手、音乐家、舞蹈家以及其他表演、歌唱、演说、朗诵、演奏、诠释或以其他方式呈现文学或艺术作品或民间文学艺术表达的人；
- (e) 录音制品指对表演的声音、其他声音或声音表现形式的固定，不包括以电影或其他视听作品形式固定的内容；(f) 录音制品制作者指主动并负责首次对表演的声音、其他声音或声音表现形式进行固定的人或法律实体；(g) 表演或录音制品的出版指经权利持有人同意，向公众提供表演或录音制品的复制件，且提供的复制件数量合理。

ARTICLE 18.7: PROTECTION OF ENCRYPTED PROGRAM-CARRYING SATELLITE AND CABLE SIGNALS

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

(b) willfully to receive and make use of,¹⁸ or further distribute, a program-carrying signal that originated as an encrypted satellite or cable signal knowing that it has been decoded without the authorization of the lawful distributor of the signal, or if the signal has been decoded with the authorization of the lawful distributor of the signal, willfully to further distribute the signal for purposes of commercial advantage knowing that the signal originated as an encrypted program-carrying signal and that such further distribution is without the authorization of the lawful signal distributor.
2. Each Party shall provide for civil remedies, including compensatory damages, for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted programming signal or its content.

ARTICLE 18.8: 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 application. In addition, each Party confirms that patents shall be available for any new uses or methods of using a known product.¹⁹
2. Each Party may only exclude from patentability:
- (a) 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; and

¹⁸ For greater certainty, “make use of” includes viewing of the signal, whether private or commercial.

¹⁹ For purposes of Article 18.8, a Party may treat the terms “inventive step” and “capable of industrial application” as synonymous with the terms “non-obvious” and “useful” respectively.

第18.7条：加密节目载波卫星和有线信号的保护

1. 每一缔约方应将其定为刑事犯罪：
- (a) 制造、组装、修改、进口、出口、销售、租赁或以其他方式分发有形或无形设备或系统，且明知或有理由知道该设备或系统主要用于在未经此类信号的合法分发者授权的情况下解码加密节目载波卫星或有线信号；以及

(b) 故意接收和使用¹⁸ 或进一步分发，一个节目载波信号，该信号源自加密卫星或有线信号，且明知其解码未经信号的合法分发者授权，或若信号解码已获合法分发者授权，却故意为商业优势目的进一步分发该信号，且明知该信号源自加密节目载波信号且此类进一步分发未经合法信号分发者授权。
2. 每一缔约方应针对第1款所述任何活动对任何受损害者提供民事救济，包括补偿性赔偿，包括对加密节目信号或其内容享有权益的任何人士。

第18.8条：专利

1. 每一缔约方应对所有技术领域的任何发明，无论是产品或方法，只要该发明具有新颖性、包含创造性步骤且能够工业应用，即授予专利。此外，每一缔约方确认，对于已知产品的新用途或使用方法，也应授予专利。¹⁹
2. 每一缔约方仅可将以下情形排除在可专利性之外：
- (a) 发明，为防止在其领土内进行商业利用而必须保护公共秩序或道德，包括保护人类、动物或植物的生命或健康，或避免对环境的严重损害，但此类排除不得仅因其法律禁止该利用而作出；以及

¹⁸ 为明确起见，“利用”包括对信号的观看，无论是私人还是商业用途1.

¹⁹ 就第18.8条而言，缔约方可将“创造性步骤”和“能够工业应用”分别视为与“非显而易见”和“有用”同义。

(b) diagnostic, therapeutic, and surgical procedures for the treatment of humans or animals.

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

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

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

6. (a) Each Party, at the request of the patent owner, shall adjust the term of a patent to compensate for unreasonable delays that occur in granting the patent. For purposes of this subparagraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than four years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application, whichever is later. Periods attributable to actions of the patent applicant need not be included in the determination of such delays.²⁰

(b) With respect to patents covering a new pharmaceutical product²¹ that is approved for marketing in the territory of the Party and methods of making or using a new pharmaceutical product that is approved for marketing in the territory of the Party, each Party, at the request of the patent owner, shall make available an adjustment of the patent term or the term of the patent rights of a patent covering a new pharmaceutical product, its approved

²⁰ Notwithstanding Article 18.1.9, subparagraph (a) shall apply to all patent applications filed on or after January 1, 2008.

²¹ For greater certainty, **new pharmaceutical product** in subparagraph (b) means a product that at least contains a new chemical entity that has not been previously approved as a pharmaceutical product in the territory of the Party.

(b) 用于治疗人类或动物的诊断、治疗和外科手术程序。

3. 每一缔约方可对专利授予的专有权利规定有限例外，只要此类例外不会与专利的正常利用发生无理抵触，也不会无理损害专利所有者的合法利益，同时顾及第三方的合法利益。

4. 每一缔约方应规定，只有在可据以拒绝授予专利的理由成立时，方可撤销专利。缔约方还可规定，欺诈、虚假陈述或不公平行为可作为撤销专利或宣告专利不可执行的依据。如缔约方规定了允许第三方对专利授予提出异议的程序，则该缔约方不应在专利授予前提供此类程序。

5. 与第3款相一致，如一缔约方允许第三方为支持医药产品上市许可申请而使用现有专利的主题生成所需信息，则该缔约方应规定，依此授权生产的任何产品不得在其领土内制造、使用或销售，除非是为了生成此类信息以支持满足该缔约方上市许可要求的申请；且如该缔约方允许此类产品出口，则应规定该产品仅可为其领土之外的目的出口，以生成信息支持满足该缔约方上市许可要求的申请。

6. (a) 每一缔约方应根据专利所有者的请求，调整专利期限以补偿专利授予过程中发生的不合理延迟。就本项而言，不合理延迟至少应包括自专利申请在缔约方领土内提交之日起超过四年未授予专利，或自申请审查请求提出后超过三年未授予专利（以较晚者为准）。专利申请人自身行为导致的延迟期间可不计入此类延迟的认定。²⁰

(b) 对于覆盖在缔约方领土内获准上市的新药品²¹ 及其制造或使用方法（该新药品已在缔约方领土内获准上市）的专利，每一缔约方应根据专利所有者的请求，对覆盖该新药品、其批准

²⁰ 尽管有第18.1.9条规定，(a)项应适用于2008年1月1日或之后提交的所有专利申请。

²¹ 为进一步明确，(b)项中的新药品指至少含有一种新化学实体的产品，且该化学实体此前未在缔约方领土内作为医药产品获得批准。

method of use, or a method of making the product to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process related to the first commercial use of that pharmaceutical product in the territory of that Party. Any adjustment under this subparagraph shall confer all of the exclusive rights, subject to the same limitations and exceptions, of the patent claims of the product, its method of use, or its method of manufacture in the originally issued patent as applicable to the product and the approved method of use of the product.²²

7. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure:
- (a) was made or authorized by, or derived from, the patent applicant, and
 - (b) occurred within 12 months prior to the date of filing of the application in the territory of the Party.²³
8. Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections, and observations in connection with their applications.
9. Each Party shall provide that a disclosure of a claimed invention shall be considered to be sufficiently clear and complete if it provides information that allows the invention to be made and used by a person skilled in the art, without undue experimentation, as of the filing date.
10. Each Party shall provide that a claimed invention:
- (a) is sufficiently supported by its disclosure if the disclosure allows a person skilled in the art to extend the teaching therein to the entire scope of the claim, thereby showing that the applicant does not claim subject matter which the applicant had not recognized and described or possessed on the filing date; and
 - (b) is industrially applicable if it has a specific, substantial, and credible utility.
11. The Parties shall endeavor to establish a framework for cooperation between their respective patent offices as a basis for progress towards the mutual exploitation of search and examination work.

²² For purposes of subparagraph (b), **effective patent term** means the period from the date of approval of the product until the original expiration date of the patent.

²³ Notwithstanding Article 18.1.9, paragraph 7 shall apply to all patent applications filed on or after January 1, 2008.

使用方法或该产品制造方法的专利期限或专利权期限进行调整，以补偿专利所有者因该医药产品在该方领土内首次商业使用相关的市场审批流程而导致的有效专利期限不合理缩短。根据本项作出的任何调整应授予原始颁发的专利中产品、其使用方法或制造方法专利权利要求的所有专有权利，并受相同的限制和例外约束，这些权利适用于该产品及其批准的使用方法。²²

7. 每一缔约方应忽略用于确定一项发明是否具有新颖性或创造性步骤的公开披露中所含信息，若该公开披露：
- (a) 由专利申请人作出或授权，或源自专利申请人；且
 - (b) 发生在该缔约方领土内申请日之前的12个月内。²³
8. 每一缔约方应至少为专利申请人提供一次机会，就其申请作出修正、更正和意见。
9. 每一缔约方应规定，若一项要求保护的发明的披露提供了使本领域技术人员无需过度实验即可根据申请日制造和使用该发明的信息，则该披露应被视为足够清晰和完整。
10. 每一缔约方应规定，一项要求保护的发明：
- (a) 若其披露允许本领域技术人员将其中教导延伸至权利要求全部范围，从而表明申请人未要求保护其在申请日尚未认识、描述或拥有的主题，则该披露视为对发明提供了充分支持；且
 - (b) 若具有具体、实质和可信的用途，则具备工业适用性。
11. 雙方应努力在其各自专利局之间建立合作框架，作为实现检索和审查工作相互利用进展的基础。

²² 就(b)项而言，有效专利期限指自该产品批准之日起至专利原始到期日止的期间。²³ 尽管有第18.1.9条规定，第7款应适用于2008年1月1日或之后提交的所有专利申请。

ARTICLE 18.9: MEASURES RELATED TO CERTAIN REGULATED PRODUCTS

1. (a) If a Party requires or permits, as a condition of granting marketing approval for a new pharmaceutical or new agricultural chemical product, the submission of information concerning safety or efficacy of the product, the origination of which involves a considerable effort, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the territory of the Party, authorize another to market a same or a similar product based on:
- (i) the safety or efficacy information submitted in support of the marketing approval; or
- (ii) evidence of the marketing approval,
- for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of marketing approval in the territory of the Party.
- (b) If a Party requires or permits, in connection with granting marketing approval for a new pharmaceutical or new agricultural chemical product, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval in the other territory, the Party shall not, without the consent of a person that previously submitted the safety or efficacy information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on:
- (i) the safety or efficacy information submitted in support of the prior marketing approval in the other territory; or
- (ii) evidence of prior marketing approval in the other territory,
- for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of marketing approval of the new product in the territory of the Party.²⁴
- (c) For purposes of this Article, a **new pharmaceutical product** is one that does not contain a chemical entity that has been previously approved in the territory of the Party for use in a pharmaceutical product, and a **new**

²⁴ The Parties acknowledge that, as of the date of signature of this Agreement, neither Party permits a person, not having the consent of the person that previously submitted safety or efficacy information to obtain marketing approval in another territory, to market a same or similar product in the territory of the Party on the basis of such information or evidence of prior marketing approval in such other territory.

第18.9条：关于某些受管制产品的措施

1. (a) 如一缔约方要求或允许，作为授予新药品或新农用化学品上市许可的条件，提交涉及相当大的努力所产生的产品安全性或有效性信息，则该缔约方未经先前为获得该缔约方境内的上市许可而提交此类安全性或有效性信息的人同意，不得基于以下情况授权他人销售相同或类似产品：
- (i) 为支持上市许可而提交的安全性或有效性信息；或
- (ii) 上市许可的证明，
- 自缔约方境内的上市许可日期起，药品至少五年，农用化学品至少十年。
- (b) 如果缔约方在授予新药品或新农用化学品上市许可时，要求或允许提交关于先前在其他领土获批产品（如其他领土的先前营销许可证明）的安全性或有效性证据，则该缔约方不得在未获得先前向其他领土提交安全性或有效性信息以获得上市许可之人同意的情况下，基于以下内容授权他人销售相同或类似产品：
- (i) 为支持其他领土的先前营销许可而提交的安全性或有效性信息；或
- (ii) 在其他领土上先前营销许可的证据，
- 对于药品至少五年，农用化学品至少十年，自新颖产品在缔约方领土上获得上市许可之日起计算。²⁴
- (c) 就本条款而言，新药品是指不包含先前已在缔约方领土内获准用于医药产品的化学实体的产品，而新

²⁴ 雙方承认，截至本协议签署日期，任何一方均不允许未经先前提交安全性或有效性信息以获得另一领土上市许可的人同意，基于此类信息或另一领土先前营销许可的证据，在缔约方领土上销售相同或类似产品。

agricultural chemical product is one that contains a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

农用化学品是指包含先前未在缔约方领土内获准用于农用化学品的化学实体的产品。

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

2. (a) 如一缔约方要求或允许，作为对包含先前已在另一医药产品中获得上市许可的化学实体的医药产品授予上市许可的条件，提交对含有该先前已获许可化学实体的医药产品获得批准至关重要的新临床信息（与生物等效性无关的信息除外），则该缔约方不得在未获得先前提交此类新临床信息以获取该缔约方领土内上市许可的人士同意的情况下，基于以下内容授权他人销售相同或类似产品：

- (i) the new clinical information submitted in support of the marketing approval; or
- (ii) evidence of the marketing approval based on the new clinical information,

- (i) 为支持上市许可而提交的新临床信息；或 (ii) 基于新临床信息的上市许可证明，

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

自该缔约方领土内上市许可日期起至少三年内。

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

- (b) 如一缔约方要求或允许，在授予(a)项所述类型医药产品的上市许可时，提交关于已在另一领土基于该新临床信息获得批准的产品的临床新信息证明（与生物等效性相关的信息证明除外，例如基于该新临床信息的先前营销许可证明），则该缔约方不得在未获得先前提交此类新临床信息以获取其他领土内上市许可的人士同意的情况下，基于以下内容授权他人销售相同或类似产品：

- (i) the new clinical information submitted in support of the prior marketing approval in the other territory; or
- (ii) evidence of prior marketing approval based on the new clinical information in the other territory,

- (i) 为支持其他领土上先前营销许可而提交的新颖临床信息；或 (ii) 其他领土上基于新颖临床信息的先前营销许可证明，

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

自缔约方领土内基于新颖临床信息的上市许可日期起至少三年内有效。

- (c) If a Party requires or permits, as a condition of granting marketing approval for a new use, for an agricultural chemical product that has been previously approved in the territory of the Party, the submission of safety or efficacy

- (c) 如果一缔约方要求或许可，作为授予农用化学品新用途上市许可的条件，该产品先前已在缔约方领土内获得批准，需提交安全性或有效性

information, the origination of which involves a considerable effort, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the territory of the Party, authorize another to market a same or similar product for that use based on:

- (i) the submitted safety or efficacy information; or
- (ii) evidence of the marketing approval for that use,

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

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

- (i) the safety or efficacy information submitted in support of the prior marketing approval for that use in the other territory; or
- (ii) evidence of prior marketing approval in another territory for that new use,

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

3. With respect to pharmaceutical products, notwithstanding paragraphs 1 and 2, a Party may take measures to protect public health in accordance with:

- (a) the *Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2) (the Declaration);
- (b) any waiver of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Declaration and in force between the Parties; and
- (c) any amendment of the TRIPS Agreement to implement the Declaration that enters into force with respect to the Parties.

信息，且该信息的产生涉及相当大的努力，则该缔约方不得在未获得先前提交此类安全性或有效性信息以获得缔约方境内上市许可的人同意的情况下，授权他人基于以下情况销售相同或类似产品用于该用途：

- (i) 所提交的安全性或有效性信息；或(ii) 该用途的上市许可证明，

自农用化学品在缔约方领土获得原始上市许可之日起至少十年内。

- (d) 若缔约方在授予新用途上市许可时，针对先前已在其领土获批的农用化学品，要求或允许提交关于该产品在其他领土针对该新用途已获批的安全性或有效性证据（例如该新用途的先前营销许可证明），则未经此前为在其他领土获得上市许可而提交安全性或有效性信息之人的同意，缔约方不得基于以下内容授权他人销售相同或类似产品：

- (i) 为支持该用途在其他领土的先前营销许可而提交的安全性或有效性信息；或(ii) 该新用途在其他领土的先前营销许可证明，

自该缔约方领土内首次授予上市许可之日起至少十年内有效。

3. 关于药品，尽管有第1款和第2款的规定，缔约方可采取符合以下规定的措施以保护公共卫生：

- (a) 《TRIPS协定与公共卫生宣言》（WT/MIN(01)/DEC/2）（简称《宣言》）；
- (b) 世贸组织成员根据《世贸组织协定》为实施《宣言》而授予的、且在雙方之间生效的与贸易有关的知识产权协定任何条款的豁免；以及(c) 为实施《宣言》而对与贸易有关的知识产权协定作出的、对缔约方生效的任何修正案。

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

5. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting safety or efficacy information, to rely on that information or on evidence of safety or efficacy information of a product that was previously approved, such as evidence of prior marketing approval in the territory of the Party or in another territory, that Party shall:

- (a) provide that the patent owner shall be notified of the identity of any such other person that requests marketing approval to enter the market during the term of a patent notified to the approving authority as covering that product or its approved method of use; and
- (b) implement measures in its marketing approval process to prevent such other persons from marketing a product without the consent or acquiescence of the patent owner during the term of a patent notified to the approving authority as covering that product or its approved method of use.

ARTICLE 18.10: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

General Obligations

1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights be in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based. Each Party shall also provide that those decisions and rulings be published²⁵ or, where publication is not practicable, otherwise made available to the public, in its national language in such a manner as to enable governments and right holders to become acquainted with them.

2. Each Party shall publicize information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative, and criminal systems, including any statistical information that the Party may collect for such purposes.²⁶

²⁵ A Party may satisfy the publication requirement in paragraph 1 by making the decision or ruling available to the public on the Internet.

²⁶ For greater certainty, nothing in paragraph 2 is intended to prescribe the type, format, and method of publication of the information a Party must publicize.

4. 在第3款的约束下，当某一产品在缔约方领土内根据第1款或第2款受到上市许可制度的约束，并且在该领土内还受专利保护时，如果专利保护终止日期早于上述条款规定的保护期限届满日，则该缔约方不得更改其根据上述条款提供的保护期限。

5. 如一缔约方允许除最初提交安全性或有效性信息者外的其他人，以批准医药产品上市为条件，依赖该信息或依赖先前已获批产品的安全性或有效性证据（例如该缔约方领土或其他领土内先前营销许可的证据），则该缔约方应：

- (a) 规定须向专利所有者通知任何此类其他人的身份，该其他人请求在已向审批机构通报的涵盖该产品或其批准使用方法的专利有效期内进入市场的上市许可；且
- (b) 在其市场审批流程中实施措施，以防止此类其他人士在已向审批机构通报的涵盖该产品或其批准使用方法的专利有效期内，未经专利所有者同意或默许而销售产品。

第18.10条：知识产权执法

一般义务

1. 每一缔约方应规定，关于知识产权执法的具有普遍适用性的最终司法判决和行政裁决应以书面形式作出，并陈述相关事实认定及决定或裁决所依据的理由或法律基础。每一缔约方还应规定，此类判决和裁决应以本国语言出版²⁵，或在出版不可行时，以其他方式向公众提供，以便政府和权利持有人能够知悉。

2. 每一缔约方应公布其努力在民事、行政和刑事系统中提供有效知识产权执法的信息，包括缔约方可能为此目的收集的任何统计信息。²⁶

²⁵ 缔约方可通过在互联网上公开决定或裁决来满足第1款中的出版要求。

²⁶ 为进一步明确，第2款中的任何内容均无意规定缔约方必须公开的信息的出版类型、格式和方法。

3. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram in the usual manner is the designated right holder in such work, performance, or phonogram. Each Party shall also provide for a presumption that, in the absence of proof to the contrary, the copyright or related right subsists in such subject matter. In civil, administrative, and criminal proceedings involving trademarks, each Party shall provide for a rebuttable presumption that a registered trademark is valid. In civil and administrative proceedings involving patents, each Party shall provide for a rebuttable presumption that a patent is valid, and shall provide that each claim of a patent is presumed valid independently of the validity of the other claims.

Civil and Administrative Procedures and Remedies

4. Each Party shall make available to right holders²⁷ civil judicial procedures concerning the enforcement of any intellectual property right.
5. Each Party shall provide that:
- (a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder:
 - (i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement;²⁸ or
 - (ii) at least in the case of copyright or related rights infringement and trademark counterfeiting, the profits of the infringer that are attributable to the infringement, which may be presumed to be the amount of damages referred to in clause (i); and
 - (b) in determining damages for infringement of intellectual property rights, its judicial authorities shall consider, *inter alia*, the value of the infringed good or service, measured by the market price, the suggested retail price, or other legitimate measure of value submitted by the right holder.

6. In civil judicial proceedings, each Party shall, at least with respect to works, phonograms, and performances protected by copyright or related rights, and in cases of trademark counterfeiting, establish or maintain pre-established damages, which shall be available on the election of the right holder. Pre-established damages shall be in an

²⁷ For purposes of Article 18.10, “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.

²⁸ In the case of patent infringement, damages adequate to compensate for the infringement shall not be less than a reasonable royalty.

3. 在涉及版权或相关权利的民事、行政和刑事诉讼中，每一缔约方应规定一项推定，即在没有相反证据的情况下，以通常方式被指明为作品、表演或录音制品的作者、制作人、表演者或出版商的人，即为该作品、表演或录音制品的指定权利持有人。每一缔约方还应规定一项推定，即在没有相反证据的情况下，版权或相关权利存在于该主题事项中。在涉及商标的民事、行政和刑事诉讼中，每一缔约方应规定一项可反驳的推定，即注册商标是有效的。在涉及专利的民事和行政诉讼中，每一缔约方应规定一项可反驳的推定，即专利是有效的，并应规定每一项专利权利要求被推定为独立于其他权利要求的有效性而有效。

民事和行政程序及救济

4. 每一缔约方应向权利持有人提供²⁷ 关于执行任何知识产权的民事司法程序。
5. 每一缔约方应规定：
- (a) 在民事司法程序中，其司法机关应有权命令侵权人向权利持有人支付：(i) 足以补偿权利持有人因侵权所受损害的损害赔偿；²⁸ 或(ii) 至少在版权或相关权利侵权和商标假冒的情况下，侵权人因侵权所获利润，该利润可推定为第(i)项所指的损害赔偿金额；以及(b) 在确定知识产权侵权损害赔偿时，其
- 司法机关应特别考虑被侵权的商品或服务的价值，该价值可通过市场价格、建议零售价或权利持有人提交的其他合法价值衡量标准来确定。

6. 在民事司法程序中，每一缔约方至少应针对受版权或相关权利保护的作品、录音制品和表演，以及在商标假冒案件中，确立或维持预先确定的损害赔偿，该赔偿应可供权利持有人选择。预先确定的损害赔偿应处于一个

²⁷ 就条款18.10而言，“权利持有人”包括具有法律资格的联合会或协会主张此类权利资格和权限，也包括在特定知识产权中独占拥有一项或多项知识产权的人。

²⁸ 在专利侵权的情况下，足以补偿侵权的损害赔偿不应低于合理使用费。

amount sufficient to constitute a deterrent to future infringements and to compensate fully the right holder for the harm caused by the infringement.²⁹

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

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

9. Each Party shall provide that:

- (a) in civil judicial proceedings, at the right holder’s request, goods that have been found to be pirated or counterfeit shall be destroyed, except in exceptional circumstances;
- (b) its judicial authorities shall have the authority to order that materials and implements that have been used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements; and
- (c) in regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.

10. Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to provide, for the purpose of collecting evidence, any information that the infringer possesses or controls regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of

²⁹ Neither Party is required to apply paragraph 6 to actions for infringement against a Party or a third party acting with the authorization or consent of a Party.

足以构成对未来侵权行为的威慑的金额，并充分补偿权利持有人因侵权造成的损害。²⁹

7. 每一缔约方应规定，除特殊情况外，其司法机关在关于版权或相关权利侵权、专利侵权或商标侵权的民事司法程序结束时，应有权命令败诉方向胜诉方支付法庭费用，且至少在关于版权或相关权利侵权或故意商标假冒的程序中，支付合理的律师费。此外，每一缔约方应规定，至少在特殊情况下，其司法机关在关于专利侵权的民事司法程序结束时，应有权命令败诉方向胜诉方支付合理的律师费。

8. 在关于版权或相关权利侵权和商标假冒的民事司法程序中，每一缔约方应规定，其司法机关应有权命令扣押涉嫌侵权的商品、与侵权行为相关的材料及工具，且至少在商标假冒案件中，扣押与侵权相关的书面证据。

9. 每一缔约方应规定：

- (a) 在民事司法程序中，经权利持有人请求，对于已被认定构成盗版或假冒的商品，除特殊情况外，应予销毁；(b) 其司法机关应有权责令将用于制造或创作此类盗版或假冒商品的材料和工具，在不给予任何形式补偿的情况下，迅速销毁，或在特殊情况下，在不给予任何形式补偿的情况下，以将再次侵权的风险降至最低的方式，将其处理至商业渠道之外；以及(c) 对于假冒商标商品，简单地去除非法附加的商标不足以允许将该商品放行进入商业渠道。

10. 每一缔约方应规定，在涉及知识产权执法的民事司法程序中，其司法机关应有权责令侵权人出于收集证据的目的，提供侵权人拥有或控制的关于参与侵权任何方面的任何人员的信息，以及关于

²⁹ 任何一方均无义务将第6款适用于针对一方或经一方授权或同意行事的第三方的侵权诉讼。

such goods or services, including the identification of third persons involved in the production and distribution of the infringing goods or services or in their channels of distribution, and to provide this information to the right holder or the judicial authorities.

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

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

13. In civil judicial proceedings concerning the acts described in paragraphs 7 and 8 of Article 18.4, each Party shall provide that its judicial authorities shall, at the least, have the authority to:

- (a) impose provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity;
- (b) provide an opportunity for the right holder to elect award of either actual damages it suffered or pre-established damages;
- (c) order payment to the prevailing right holder at the conclusion of civil judicial proceedings of court costs and fees, and reasonable attorney’s fees, by the party engaged in the prohibited conduct; and
- (d) order the destruction of devices and products found to be involved in the prohibited activity.

Neither Party may make damages available under this paragraph against a nonprofit library, archives, educational institution, or public noncommercial broadcasting entity that sustains the burden of proving that it was not aware and had no reason to believe that its acts constituted a prohibited activity.

14. In civil judicial proceedings concerning the enforcement of intellectual property rights, each Party shall provide that its judicial authorities shall have the authority to order a party to desist from an infringement, in order, *inter alia*, to prevent infringing imports from entering the channels of commerce and to prevent their exportation.

此类侵权商品或服务的生产或分销渠道的手段的信息，包括参与侵权商品或服务的生产、分销或其分销渠道的第三方的身份，并将此等信息提供给权利持有人或司法机关。

11. 每一缔约方应确保其司法机关有权：
- (a) 在适当情况下，对不遵守司法机关所发布有效命令的民事司法程序当事人处以罚款、拘留或监禁；以及 (b) 对民事司法程序当事人、其律师、专家或受法院管辖的其他人员，因违反关于程序中产生或交换的机密信息保护的司法命令而实施制裁。

12. 若任何民事救济可因案件实体问题的行政程序而作出命令，每一缔约方应确保此类程序在实质上符合本章节规定的等效原则。

13. 在涉及第18.4条第7款和第8款所述行为的民事司法程序中，每一缔约方应确保其司法机关至少有权：

- (a) 采取临时措施，包括扣押涉嫌参与被禁止活动的设备和产品； (b) 为权利持有人提供选择，可要求获得其遭受的实际损害赔偿或预先确定的损害赔偿； (c) 在民事司法程序结束时，命令从事被禁止行为的一方支付胜诉权利持有人的法庭费用及合理的律师费；以及 (d) 命令销毁被认定参与被禁止活动的设备和产品。

任何缔约方均不得根据本款规定对非营利图书馆、档案馆、教育机构或公共非商业广播实体主张损害赔偿，前提是该实体能够证明其不知且无合理理由认为其行为构成被禁止的活动。

14. 在涉及知识产权执法的民事司法程序中，每一缔约方应规定其司法机关有权责令一方停止侵权，除其他外，以防止侵权进口商品进入商业渠道并阻止其出口。

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

Alternative Dispute Resolution

16. Each Party may permit use of alternative dispute resolution procedures to resolve civil disputes concerning intellectual property rights.

Provisional Measures

17. Each Party shall act on requests for provisional measures *inaudita altera parte* expeditiously.

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

Special Requirements Related to Border Measures

19. Each Party shall provide that any right holder initiating procedures for its competent authorities to suspend release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods³⁰ into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder’s knowledge to make the suspected goods reasonably recognizable by its competent authorities. The requirement to provide sufficient information shall not

³⁰ For purposes of paragraphs 19 through 25:

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

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

15. 如一缔约方的司法或其他主管机关在涉及知识产权执法的民事诉讼程序中任命技术或其他专家，并要求诉讼各方承担此类专家的费用，则该缔约方应寻求确保此类费用除其他外，与所执行工作的数量和性质密切相关，且不会不合理地阻碍对此类程序的诉诸。

替代性争议解决

16. 每一缔约方可允许使用替代性争议解决程序来解决涉及知识产权的民事纠纷。

临时措施

17. 每一缔约方应迅速处理未经对方听审的临时措施请求。

18. 每一缔约方应规定，其司法机关有权要求原告就临时措施提供任何合理可获得的证据，以使司法机关足以确信原告的权利正在受到侵权或此类侵权即将发生，并有权命令原告提供合理保证金或同等担保，其金额应足以保护被告并防止滥用，且不会不合理地阻碍诉诸此类程序。

与边境措施相关的特殊要求

19. 每一缔约方应规定，任何权利持有人启动程序要求其主管当局暂停放行涉嫌假冒或易混淆的类似商标货物，或盗版版权商品³⁰进入自由流通时，需提供充分证据以使主管当局确信，根据进口国法律，存在初步证据表明权利持有人的知识产权受到侵犯，并提供权利持有人合理掌握的可使主管当局识别涉嫌货物的足够信息。提供足够信息的要求不得

³⁰ 就第19至25段而言：

(a) 假冒商标货物指任何货物（包括包装），未经授权而载有与该类货物上有效注册的商标相同的商标，或在该商标基本特征上无法与之区分的商标，并因此依照进口国法律侵犯了该商标所有者的权利；且

(b) 盗版版权商品指任何商品，其复制件的制作未经权利持有人或在生产国经权利持有人正式授权之人的同意，且直接或间接复制自某一物品，而依照进口国法律，该复制行为将构成对版权或相关权利的侵权。

unreasonably deter recourse to these procedures. Each Party shall provide that the application to suspend the release of goods shall apply to all points of entry to its territory and remain applicable for a period of not less than one year from the date of application, or the period that the good is protected by copyright or that the relevant trademark registration is valid, whichever is shorter.

20. Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods, 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 the security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party may provide that the security may be in the form of a bond conditioned to hold the importer or owner of the imported merchandise harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good. In no case shall an importer be permitted to post a bond or other security to obtain possession of suspected counterfeit or confusingly similar trademark goods, or of pirated copyright goods.

21. Where its competent authorities have seized goods that are counterfeit or pirated, a Party shall inform the right holder within 30 days of the seizure of the names and addresses of the consignor, importer, exporter, or consignee, and provide to the right holder a description of the merchandise, the quantity of the merchandise, and, if known, the country of origin of the merchandise.

22. Each Party shall provide that its competent authorities may initiate border measures *ex officio*³¹ with respect to imported, exported, or in-transit merchandise,³² or merchandise in free trade zones, that is suspected of being counterfeit or confusingly similar trademark goods, or pirated copyright goods.

23. Each Party shall provide that goods that have been suspended from release by its customs authorities, and that have been forfeited as pirated or counterfeit, shall be destroyed, except in exceptional circumstances. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. In no event shall the competent authorities be authorized, except in exceptional circumstances, to permit the exportation of counterfeit or pirated goods or to permit such goods to be subject to other customs procedures.

³¹ For greater certainty, the Parties understand that *ex officio* action does not require a formal complaint from a private party or right holder.

³² For purposes of paragraph 22, **in-transit merchandise** means goods under “Customs transit” and goods “transshipped,” as defined in the *International Convention on the Simplification and Harmonization of Customs Procedures* (Kyoto Convention).

不合理地阻碍诉诸这些程序。每一缔约方应规定，暂停放行货物的申请应适用于其领土的所有入境点，且自申请之日起有效期不少于一年，或货物受版权保护期限或相关商标注册有效期（以较短者为准）。

20. 每一缔约方应规定，其主管当局有权要求启动程序以中止涉嫌假冒或易混淆的类似商标货物或盗版版权商品放行的权利持有人提供合理保证金或同等担保，该保证金或担保应足以保护被告和主管当局并防止滥用。每一缔约方应规定，该保证金或同等担保不得无理阻碍诉诸这些程序。每一缔约方可规定，保证金可以采取有条件的形式，即在主管当局确定该条款并非侵权商品的情况下，保证进口商或进口商品的所有者免受因中止货物放行而导致的任何损失或损害。在任何情况下，均不得允许进口商通过提交保证金或其他担保来获取涉嫌假冒或易混淆的类似商标货物或盗版版权商品的占有权。

21. 如缔约方主管当局扣押了假冒或盗版商品，该缔约方应在扣押后30天内通知权利持有人发货人、进口商、出口商或收货人的名称和地址，并向权利持有人提供商品的描述、数量以及（如已知）商品的原产国信息。

22. 每一缔约方应规定，其主管当局可依职权³¹ 对涉嫌假冒或混淆性相似商标商品、或盗版版权商品的进口、出口或过境商品³²，或自由贸易区内的商品启动边境措施。

23. 每一缔约方应规定，被其海关当局中止放行的货物，且已被没收为盗版或假冒的货物，应予以销毁，特殊情况除外。对于假冒商标货物，简单地去除非法附加的商标不足以允许货物进入商业渠道。在任何情况下，主管当局均不得被授权，除非在特殊情况下，允许假冒或盗版货物的出口或允许此类货物接受其他海关程序。

³¹ 为进一步明确，雙方理解依职权行动不需要来自私人方或权利持有人的正式投诉。

³² 就第22款而言，过境商品指《关于简化和协调海关程序的国际公约》（京都公约）定义的“海关转运”货物和“转船”货物。

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

25. Each Party shall provide the other Party, on mutually agreed terms, with technical advice on the enforcement of border measures concerning intellectual property rights, and the Parties shall promote bilateral and regional cooperation on these matters.

Criminal Procedures and Remedies

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

- (a) significant willful copyright or related rights infringements that have no direct or indirect motivation of financial gain; and
- (b) willful infringements for purposes of commercial advantage or private financial gain.³³

Each Party shall treat willful importation or exportation of counterfeit or pirated goods as unlawful activities subject to criminal penalties.³⁴

27. Further to paragraph 26, each Party shall provide:

- (a) penalties that include sentences of imprisonment as well as monetary fines sufficient to provide a deterrent to future infringements, consistent with a policy of removing the infringer’s monetary incentive. Each Party shall further encourage judicial authorities to impose those penalties at levels sufficient to provide a deterrent to future infringements, including the imposition of actual terms of imprisonment when criminal infringement occurs for purposes of commercial advantage or private financial gain;
- (b) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements used in the commission of the offense, any documentary evidence relevant to the offense, and any assets traceable to the infringing activity. Each Party shall provide that such orders need not individually

³³ For purposes of paragraph 26 and Articles 18.4.7(a), 18.4.8(a), and 18.10.27 and for greater certainty, “financial gain” includes the receipt or expectation of anything of value.

³⁴ A Party may comply with the obligation in paragraph 26 in relation to exportation of pirated goods through its measures concerning distribution.

24. 如为执行知识产权而采取边境措施时征收申请费或商品仓储费，每一缔约方应规定该费用不得设定为不合理阻碍求助于这些措施的金额。

25. 每一缔约方应根据双方商定的条款，向另一方提供关于知识产权边境措施执行的技术建议，双方应促进在这些事项上的双边和区域合作。

刑事程序和补救措施

26. 每一缔约方应规定刑事程序和处罚，至少适用于故意商标假冒或商业规模的版权或相关权利盗版案件。商业规模的故意版权或相关权利盗版包括：

- (a) 无直接或间接经济利益动机的重大故意版权或相关权利侵权；及 (b) 为商业优势或私人经济利益目的的故意侵权。³³

每一缔约方应将故意进口或出口假冒或盗版商品视为应受刑事处罚的非法活动。³⁴

27. 进一步而言，在第26段的基础上，每一缔约方应规定：

- (a) 包括监禁刑及足以对未来的侵权行为形成威慑的罚款在内的处罚，该等处罚应符合消除侵权人经济动机的政策。每一缔约方应进一步鼓励司法机关处以足以对未来的侵权行为形成威慑的处罚，包括在出于商业优势或私人经济利益目的而构成刑事侵权时，实际判处监禁刑；
- (b) 其司法机关应有权下令扣押疑似假冒或盗版商品、用于实施侵权行为的任何相关材料和工具、与侵权行为相关的任何书面证据，以及可追溯至侵权活动的任何资产。每一缔约方应规定，此类命令无需单独

³³ 就第26款及第18.4.7(a)条、第18.4.8(a)条和第18.10.27条而言，并为明确起见，“经济利益”包括接收或预期获得任何有价值之物。

³⁴ 缔约方可通过其关于分發的措施，履行第26款中有关盗版商品出口的义务。

- identify the items that are subject to seizure, so long as they fall within general categories specified in the order;
- (c) that its judicial authorities shall have the authority to order, among other measures, the forfeiture of any assets traceable to the infringing activity;
- (d) that its judicial authorities shall, except in exceptional cases, order
- (i) the forfeiture and destruction of all counterfeit or pirated goods, and any articles consisting of a counterfeit mark; and
- (ii) the forfeiture and/or destruction of materials and implements that have been used in the creation of pirated or counterfeit goods.
- Each Party shall further provide that forfeiture and destruction under this subparagraph and subparagraph (c) shall occur without compensation of any kind to the defendant;
- (e) that, in criminal cases, its judicial or other competent authorities shall keep an inventory of goods and other material proposed to be destroyed, and shall have the authority temporarily to exempt these materials from the destruction order to facilitate the preservation of evidence on notice by the right holder that it wishes to bring a civil or administrative case for damages; and
- (f) that its authorities may initiate legal action *ex officio* with respect to the offenses described in this Chapter, without the need for a formal complaint by a private party or right holder.

28. Each Party shall also provide for criminal procedures and penalties to be applied, even absent willful trademark counterfeiting or copyright piracy, at least in cases of knowing trafficking in:

- (a) counterfeit labels or illicit labels affixed to, enclosing, or accompanying, or designed to be affixed to, enclose, or accompany: a phonogram, a copy of a computer program or other literary work, a copy of a motion picture or other audiovisual work, or documentation or packaging for such items; and
- (b) counterfeit documentation or packaging for items of the type described in subparagraph (a).

29. Each Party shall also provide for criminal procedures to be applied against any person who, without authorization of the holder of copyright or related rights in a motion picture or other audiovisual work, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of the motion picture or other audiovisual

- 列明需扣押的具体物品，只要这些物品属于命令中规定的总体类别即可；
- (c) 其司法机关应有权命令采取包括没收可追溯至侵权活动的资产在内的措施；
- (d) 其司法机关应在除特殊情况外下令
- (i) 没收并销毁所有假冒或盗版商品及任何带有假冒商标的物品；以及 (ii) 没收和/或销毁用于制作盗版或假冒商品的材料和工具。
- 每一缔约方还应规定，根据本项及(c)项进行的没收和销毁不得向被告提供任何形式的补偿；
- (e) 在刑事案件中，其司法或其他主管机关应保存拟销毁商品及其他材料的清单，并应有权暂时豁免这些材料执行销毁令，以便在权利持有人通知其拟提起损害赔偿民事或行政诉讼时协助证据保全；以及
- (f) 其当局可依职权就本章所述违法行为启动法律行动，无需私人方或权利持有人提出正式投诉。

28. 每一缔约方还应规定刑事程序和处罚的适用，即使在不存在故意商标假冒或版权盗版的情况下，至少对于明知贩运以下物品的行为：

- (a) 假冒标签或非法标签，这些标签被粘贴于、包裹或伴随，或设计用于粘贴、包裹或伴随以下物品：录音制品、计算机程序或其他文学作品的复制件、电影或其他视听作品的复制件，或此类物品的文件或包装；以及 (b) 第(a)项所述类型物品的假冒文件或包装。

29. 每一缔约方还应规定刑事程序，适用于任何人在未经电影或其他视听作品的版权或相关权利持有人授权的情况下，故意使用或试图使用视听录制设备传输或制作电影或其他视听

work, or any part thereof, from a performance of the motion picture or other audiovisual work in a public motion picture exhibition facility.

Liability for Service Providers and Limitations

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

- (a) legal incentives for service providers to cooperate with copyright³⁵ owners in deterring the unauthorized storage and transmission of copyrighted materials; and
- (b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate, or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth in this subparagraph (b).³⁶
 - (i) These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or restrain certain actions for the following functions, and shall be confined to those functions:³⁷
 - (A) transmitting, routing, or providing connections for material without modification of its content, or the intermediate and transient storage of such material in the course thereof;
 - (B) caching carried out through an automatic process;
 - (C) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and
 - (D) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

³⁵ For purposes of paragraph 30, “copyright” includes related rights.

³⁶ Subparagraph (b) is without prejudice to the availability of defenses to copyright infringement that are of general applicability.

³⁷ Either Party may request consultations with the other Party to consider how to address under subparagraph (b) functions of a similar nature that a Party identifies after the date this Agreement enters into force.

作品或其任何部分的复制件，该行为发生在公共电影放映设施中对电影或其他视听作品的表演过程中。

服务提供商责任与限制

30. 为提供执行程序以允许针对本章涵盖的任何版权侵权行为采取有效行动，包括防止侵权的快速补救措施以及构成对进一步侵权行为威慑的刑事和民事救济，每一缔约方应根据本条设定的框架提供：

- (a) 为服务提供商提供法律激励，促使其与版权³⁵所有者合作，阻止未经授权的存储和传输受版权保护的材料；以及
- (b) 根据其法律对服务提供商因版权侵权行为可获得的救济范围进行限制，这些侵权行为并非由服务提供商控制、发起或指导，且是通过由其控制或代表其运营的系统或网络发生的，如本项(b)所述。³⁶(i) 这些限制应排除金钱救济，并对法院命令的救济施加合理限制，以强制或限制某些行动，且仅限于以下功能：³⁷(A) 在不修改内容的情况下传输、路由或为材料提供连接，或在此过程中对该材料进行中间和临时存储；(B) 通过自动过程进行的缓存；(C) 根据用户的指示，存储位于由服务提供商控制或运营或为其服务的系统或网络上的材料；以及 (D) 通过使用信息定位工具（包括超链接和目录）将用户指向在线位置。

³⁵ 就第30款而言，“版权”包括相关权利。³⁶

(b)项不影响普遍适用性的版权侵权抗辩的可用性。

³⁷ 任一缔约方可请求与另一缔约方进行磋商，以考虑如何根据(b)项处理本协议生效后缔约方确定的类似性质的功能。

- (ii) These limitations shall apply only where the service provider does not initiate the chain of transmission of the material, and does not select the material or its recipients (except to the extent that a function described in clause (i)(D) in itself entails some form of selection).
- (iii) Qualification by a service provider for the limitations as to each function in clauses (i)(A) through (D) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in clauses (iv) through (vii).
- (iv) With respect to functions referred to in clause (i)(B), the limitations shall be conditioned on the service provider:
 - (A) permitting access to cached material in significant part only to users of its system or network who have met conditions on user access to that material;
 - (B) complying with rules concerning the refreshing, reloading, or other updating of the cached material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available;
 - (C) not interfering with technology consistent with industry standards accepted in the Party’s territory used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and
 - (D) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.
- (v) With respect to functions referred to in clauses (i)(C) and (D), the limitations shall be conditioned on the service provider:
 - (A) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;

- (ii) 这些限制仅适用于服务提供商未发起材料传输链且未选择材料或其接收者的情况（除非第(i)(D)项所述功能本身涉及某种形式的选择）。
- (iii) 服务提供商对第(i)(A)至(D)项每项功能的限制资格应单独考虑，并根据第(iv)至(vii)项规定的资格条件与其他功能的限制资格分开评估。(iv) 对于第(i)(B)项所述功能，限制

应以服务提供商满足以下条件为前提：

- (A) 仅允许满足该材料用户访问条件的系统或网络用户访问缓存材料的主要部分；(B) 当材料在线提供者通过其提供材料的系统或网络，按照普遍接受的行业标准数据通信协议指定时，遵守有关缓存材料的刷新、重新加载或其他更新的规则；(C) 不干扰与缔约方领土内接受的行业标准一致的技术，该技术用于在原始站点获取材料使用信息，且在向后续用户传输时不修改其内容；以及(D) 在收到有效的侵权通知后，迅速移除或禁用对已被原始站点移除或禁用访问的缓存材料的访问。(v) 关于第(i)(C)和(D)项所述功能，

限制应以服务提供商满足以下条件为前提：

- (A) 未直接获得与该行为相关的经济利益
侵权活动， 且其对该活动具有控制权 and 能力的情况下；

- (B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with clause (ix); and
 - (C) publicly designating a representative to receive such notifications.
- (vi) Eligibility for the limitations in this subparagraph shall be conditioned on the service provider:
- (A) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and
 - (B) accommodating and not interfering with standard technical measures accepted in the Party’s territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.
- (vii) Eligibility for the limitations in this subparagraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.
- (viii) If the service provider qualifies for the limitations with respect to the function referred to in clause (i)(A), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts, or to taking reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in clause (i), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary, provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome,

- (B) 在实际知晓侵权或意识到侵权明显的事实或情况（如根据第(ix)项收到的有效侵权声明通知）后，迅速移除或禁用访问存储在其系统或网络上的材料；
- (C) 公开指定代表接收此类通知。
- (vi) 本项限制资格的适用应以服务提供商满足以下条件为前提：
- (A) 采纳并合理实施一项政策，规定在适当情况下终止重复侵权者的账户；且
- (B) 配合且不干扰标准技术措施，这些措施在缔约方领土内被接受，用于保护和识别受版权保护的材料，由版权所有者与服务提供商通过开放、自愿的过程达成广泛共识后制定，以合理且非歧视性条款提供，且不会对服务提供商施加实质性成本或对其系统或网络造成实质性负担。
- (vii) 不得以服务提供商监控其服务或积极寻找表明侵权活动的事实作为本项限制资格适用的条件，除非与此类技术措施相一致。
- (viii) 如果服务提供商符合第(i)(A)项所述功能的限制条件，法院命令的救济以强制或限制某些行动应仅限于终止指定账户，或采取合理措施阻止访问特定的非国内在线位置。如果服务提供商符合第(i)项中任何其他功能的限制条件，法院命令的救济以强制或限制某些行动应仅限于移除或禁用对侵权材料的访问、终止指定账户以及法院认为必要的其他补救措施，前提是此类其他补救措施在相对有效的救济形式中对服务提供商的负担最轻。每一缔约方应规定，任何此类救济的发布应适当考虑服务提供商的相对负担和对版权所有者的损害、补救措施的技术可行性和有效性，以及是否存在负担较轻、相对有效的执行方法。

- comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider’s communications network, each Party shall provide that such relief shall be available only where the service provider has received notice of the court order proceedings referred to in this subparagraph and an opportunity to appear before the judicial authority.
- (ix) For purposes of the notice and take down process for the functions referred to in clauses (i)(C) and (D), each Party shall establish appropriate procedures in its law or in regulations for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.
- (x) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the person giving the original effective notification seeks judicial relief within a reasonable time.
- (xi) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.
- (xii) For purposes of the function referred to in clause (i)(A), **service provider** means a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the user’s choosing, and for purposes of the functions referred to in clauses (i)(B) through (D) **service provider** means a provider or operator of facilities for online services or network access.

- 除确保证据保全的命令或其他对服务提供商通信网络运营无实质性不利影响的命令外，每一缔约方应规定，此类救济仅在服务提供商已收到本项所述法庭令程序的通知并有机会出庭向司法机关陈述的情况下方可适用。
- (ix) 就第(i)(C)和(D)项所述功能的通知与移除程序而言，每一缔约方应在其法律或法规中为有效的侵权声明通知以及因错误或误认导致材料被移除或禁用的当事人提出有效反通知制定适当程序。每一缔约方还应规定，对任何在通知或反通知中故意作出实质性虚假陈述、导致服务提供商依赖该虚假陈述而对任何利害关系方造成损害的人，可处以金钱救济。
- (x) 若服务提供商基于声称或明显的侵权善意移除或禁用对材料的访问，每一缔约方应规定该服务提供商可免除因该行为产生的任何赔偿责任，前提是：对于存储在其系统或网络上的材料，服务提供商已及时采取合理措施通知在其系统或网络上提供材料的人其已采取行动，且若该人提出有效的反通知并在侵权诉讼中受管辖权约束，则应恢复材料在线，除非发出原有效通知的人在合理时间内寻求司法救济。
- (xi) 每一缔约方应设立行政或司法程序，使已发出有效的侵权通知的版权所有者能够迅速从服务提供商处获取其掌握的涉嫌侵权者身份信息。
- (xii) 就第(i)(A)项所述功能而言，服务提供商指在不修改用户指定点之间或之中用户所选材料内容的情况下，提供数字在线通信传输、路由或连接的提供商；就第(i)(B)至(D)项所述功能而言，服务提供商指提供或运营在线服务或网络接入设施的提供商。

ARTICLE 18.11: UNDERSTANDINGS REGARDING CERTAIN PUBLIC HEALTH MEASURES

1. The Parties affirm their commitment to the *Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2).
2. The Parties have reached the following understandings regarding this Chapter:
 - (a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency. 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.
 - (b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540) and the WTO General Council Chairman’s statement accompanying the Decision (JOB(03)/177, WT/GC/M/82) (collectively, the “TRIPS/health solution”), this Chapter does not and should not prevent the effective utilization of the TRIPS/health solution.
 - (c) With respect to the aforementioned matters, if an amendment of the TRIPS Agreement enters into force with respect to the Parties and a Party’s application of a measure in conformity with that amendment violates this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the amendment.

ARTICLE 18.12: TRANSITIONAL PROVISIONS

1. Each Party shall give effect to this Chapter on the date this Agreement enters into force.
2. Notwithstanding paragraph 1, Korea shall fully implement the obligations of Article 18.4.4 within two years after the date this Agreement enters into force

ARTI条款18.11：关于特定公共卫生措施的理解

S

1. 雙方重申对《TRIPS协定与公共卫生宣言》（WT/MIN(01)/DEC/2）的承诺。
2. 雙方就本章节达成如下谅解：

(a) 本章节的义务不阻止也不应阻止缔约方采取措施通过促进全民药物获取来保护公共卫生，特别是涉及艾滋病、结核病、疟疾和其他流行病以及极端紧急情况或国家紧急状态的案例。因此，在重申对本章节承诺的同时，雙方确认本章节能够且应当以支持每一缔约方保护公共卫生权利，特别是促进全民药物获取权利的方式加以解释和实施。(b) 鉴于对按照2003年8月30日总理事会决定关于实施《TRIPS协定与公共卫生多哈宣言》第六段的决定（WT/L/540）及随决定附带的WTO总理事会主席声明（JOB(03)/177, WT/GC/M/82）（统称为“TRIPS/健康解决方案”）供应药物的承诺，本章节不阻止也不应阻止TRIPS/健康解决方案的有效利用。(c) 就上述事项而言，若TRIPS协定的修正案对雙方生效且缔约方实施符合该修正案的措施违反本章节，雙方应立即磋商以便根据修正案酌情调整本章节。

条款18.12：过渡条款

1. 每一缔约方应在本协议生效之日起实施本章节。
2. 尽管有第1款规定，韩国应在本协议生效之日起两年内全面履行第18.4.4条的义务。

[TRANSLATION]

June 30, 2007

The Honorable Susan C. Schwab
United States Trade Representative
Washington, D.C.

Dear Ambassador Schwab:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Article 18.10.30(b)(ix) (Enforcement of Intellectual Property Rights) of the Free Trade Agreement between our two Governments signed this day:

In meeting the obligations of Article 18.10.30(b)(ix), the United States shall apply the pertinent provisions of its law,¹ and any amendments thereto, and Korea shall adopt requirements for: (a) effective written notification to service providers with respect to materials that are claimed to be infringing; and (b) effective written counter-notification by those whose material is removed or disabled and who claim that it was disabled through mistake or misidentification, as set forth in this letter. Effective written notification means notification that substantially complies with the elements listed in section (a) of this letter, and effective written counter-notification means counter-notification that substantially complies with the elements listed in section (b) of this letter.

(a) Effective Written Notification, by a Copyright² Owner or Person Authorized to Act on Behalf of an Owner of an Exclusive Right, to a Service Provider’s Publicly Designated Representative³

In order for a notification to a service provider to comply with the relevant requirements set out in Article 18.10.30(b)(ix), that notification must be a written communication, which may be provided electronically, that includes substantially the following:

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

¹ 17 U.S.C. Sections 512(c)(3)(A) and 512(g)(3).

² For purposes of this letter, “copyright” includes related rights, and “works” includes the subject matter of related rights.

³ The Parties understand that a representative is publicly designated to receive notification on behalf of a service provider if the representative’s name, physical and electronic address, and telephone number are posted on a publicly accessible portion of the service provider’s website, and also in a register accessible to the public through the Internet, or designated in another form or manner appropriate for Korea.

[翻译]

2007年6月30日

尊敬的苏珊·C·施瓦布 美国贸易
代表 华盛顿特区

尊敬的施瓦布大使：

我荣幸地确认，大韩民国与美利坚合众国代表团在关于今日签署的两国政府间《自由贸易协定》第18.10.30(b)(ix)条（知识产权执法）的谈判过程中达成如下谅解：

为履行第18.10.30(b)(ix)条义务，美国应适用其法律¹ 及其任何修正案的相关规定，韩国则应采纳以下要求：(a) 针对被指称侵权的材料，向服务提供商提交有效的书面通知；及(b) 如本函所述，材料被移除或禁用且主张因错误或误认导致禁用的当事人提交有效的书面反通知。有效的书面通知指基本符合本函(a)项所列要素的通知，有效的书面反通知指基本符合本函(b)项所列要素的反通知。

(a) 版权² 所有者或独家权利所有者授权代表向服务提供商公开指定的代表³提交有效的书面通知

为使向服务提供商发出的通知符合第18.10.30(b)(ix)条规定的相关要求，该通知须为书面通信（可通过电子方式提交），并实质包含以下内容：

1. 投诉方（或其授权代理人）的身份、地址、电话号码及电子邮件地址；

《美国法典》第512(c)(3)(A)节和第512(g)(3)节。

² 就本函而言，“版权”包括相关权利，“作品”包括相关权利的客体。

³ 雙方理解，若代表的姓名、实体及电子地址、电话号码公布于服务提供商网站的公开可访问部分，并通过互联网向公众开放的注册表发布，或以其他适合韩国的形式或方式指定，则该代表被视为公开指定代表服务提供商接收通知。

- 2. Information reasonably sufficient to enable the service provider to identify the copyrighted work(s)⁴ claimed to have been infringed;
- 3. Information reasonably sufficient to permit the service provider to identify and locate the material residing on a system or network controlled or operated by it or for it that is claimed to be infringing, or to be the subject of infringing activity, and that is to be removed, or access to which is to be disabled;⁵
- 4. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- 5. A statement that the information in the notification is accurate;
- 6. A statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the complaining party is the holder of an exclusive right that is allegedly infringed, or is authorized to act on the owner’s behalf; and
- 7. The signature of the person giving notification.⁶

(b) Effective Written Counter-Notification by a Subscriber⁷ Whose Material was Removed or Disabled as a Result of Mistake or Misidentification of Material

In order for a counter-notification to a service provider to comply with the relevant requirements set out in Article 18.10.30(b)(ix), that counter-notification must be a written communication, which may be provided electronically, that includes substantially the following:

- 8. The identity, address, and telephone number of the subscriber;
- 9. The identity of the material that has been removed or to which access has been disabled;

⁴ If multiple copyrighted works at, or linked to from, a single online site on a system or network controlled or operated by or for the service provider are covered by a single notification, a representative list of such works at, or linked to from, that site may be provided.

⁵ In the case of notifications regarding an information location tool pursuant to paragraph (b)(i)(D) of Article 18.10.30, the information provided must be reasonably sufficient to permit the service provider to locate the reference or link residing on a system or network controlled or operated by or for it, except that in the case of a notification regarding a substantial number of references or links at a single online site residing on a system or network controlled or operated by or for the service provider, a representative list of such references or links at the site may be provided, if accompanied by information sufficient to permit the service provider to locate the references or links.

⁶ A signature transmitted as part of an electronic communication satisfies this requirement.

⁷ For purposes of this letter, “subscriber” refers to the person whose material has been removed or disabled by a service provider as a result of an effective notification described in section (a) of this letter.

- 2. 提供足够合理的信息以使服务提供商能够识别受版权保护的被声称侵权的⁴ 作品；
- 3. 提供足够合理的信息， 使服务提供商能够识别并定位存储在其控制或运营的系统或网络上、或被声称侵权或作为侵权活动对象的材料，该材料将被移除或对其的访问将被禁用；⁵
- 4. 一份声明，表明投诉方善意相信该材料的使用方式未经版权所有者、其代理人或法律授权；
- 5. 一份声明，表明通知中的信息准确无误； 6. 一份具有足够可靠性标志的声明（例如在伪证处罚下的声明y或等效法律制裁）证明投诉方是据称被侵权的专有权持有人， 或已获授权代表所有者行事； 且

- 7. 通知人的签名。⁶

(b) 因材料的错误或误认导致材料被移除或禁用的订阅用户⁷提交有效的书面反通知

为使向服务提供商提交的反通知符合第18.10.30(b)(ix)条规定的相关要求， 该反通知必须为书面通信（可通过电子方式提供）， 并包含以下实质性内容：

- 8. 订阅用户的身份、地址和电话号码；
- 9. 被移除或禁用访问的材料之身份；

⁴ 若单一通知涵盖服务提供商控制或运营的系统或网络中单一在线站点上或其链接的多部受版权保护的作品，可提供该站点上或其链接的此类作品代表性列表。⁵ 对于依据第18.10.30条(b)(i)(D)款关于信息定位工具的通知，所提供信息应合理充分以使服务提供商能定位其控制或运营的系统或网络上的引用或链接， 但若通知涉及服务提供商控制或运营的系统或网络中单一在线站点上大量引用或链接的情况， 可提供该站点上此类引用或链接的代表性列表， 同时附上足以使服务提供商定位引用或链接的信息。⁶ 作为电子通信组成部分传输的签名可满足此要求。⁷ 就本函而言，“订阅用户”指因其材料被服务提供商根据本函(a)节所述有效通知而移除或禁用的人员。

10.

The location at which the material appeared before it was removed or access to it was disabled;
11.

A statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material;
12.

A statement that the subscriber agrees to be subject to orders of any court that has jurisdiction over the place where the subscriber’s address is located, or, if that address is located outside the Party’s territory, any other court with jurisdiction over any place in the Party’s territory where the service provider may be found, and in which a copyright infringement suit could be brought with respect to the alleged infringement;
13.

A statement that the subscriber will accept service of process in any such suit; and
14.

The signature of the subscriber.⁸

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Sincerely,

[SGN/]
Hyun Chong Kim

10.

材料在被移除或禁用访问前所处的位置；
11.

一份具有充分可靠性标志的声明（如根据伪证处罚或同等法律制裁作出的声明），表明订阅用户善意相信该材料是因错误或误认而被移除或禁用；
12.

一份声明，表明订阅用户同意接受其地址所在地具有管辖权的任何法院之命令约束，若该地址位于缔约方领土之外，则同意接受服务提供商在缔约方领土内任何所在地具有管辖权的其他法院之命令约束，且该法院可受理针对涉嫌版权侵权提起的侵权诉讼；
13.

一份声明，表明订阅用户将接受任何此类诉讼的送达程序；以及
14.

订阅用户的签名。⁸

我荣幸地提议，本函及贵方回函确认贵国政府认同此理解，应构成《自由贸易协定》的组成部分。

此致，[SGN/]金
玄忠

⁸ A signature transmitted as part of an electronic communication satisfies this requirement.

⁸ 作为电子通信一部分传输的签名可满足此项要求。

June 30, 2007

2007年6月30日

The Honorable Hyun Chong Kim
Minister for Trade
Seoul, Republic of Korea

Dear Minister Kim:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Article 18.10.30(b)(ix) (Enforcement of Intellectual Property Rights) of the Free Trade Agreement between our two Governments signed this day:

In meeting the obligations of Article 18.10.30(b)(ix), the United States shall apply the pertinent provisions of its law,¹ and any amendments thereto, and Korea shall adopt requirements for: (a) effective written notification to service providers with respect to materials that are claimed to be infringing, and (b) effective written counter-notification by those whose material is removed or disabled and who claim that it was disabled through mistake or misidentification, as set forth in this letter. Effective written notification means notification that substantially complies with the elements listed in section (a) of this letter, and effective written counter-notification means counter-notification that substantially complies with the elements listed in section (b) of this letter.

(a) Effective Written Notification, by a Copyright² Owner or Person Authorized to Act on Behalf of an Owner of an Exclusive Right, to a Service Provider’s Publicly Designated Representative³

In order for a notification to a service provider to comply with the relevant requirements set out in Article 18.10.30(b)(ix), that notification must be a written communication, which may be provided electronically, that includes substantially the following:

¹ 17 U.S.C. Sections 512(c)(3)(A) and 512(g)(3).

² For purposes of this letter, “copyright” includes related rights, and “works” includes the subject matter of related rights.

³ The Parties understand that a representative is publicly designated to receive notification on behalf of a service provider if the representative’s name, physical and electronic address, and telephone number are posted on a publicly accessible portion of the service provider’s website, and also in a register accessible to the public through the Internet, or designated in another form or manner appropriate for Korea.

尊敬的玄正金 贸易部长 首尔，
大韩民国

尊敬的金部长：

我荣幸地确认收到您今日的来信， 内容如下：

我荣幸地确认大韩民国与美利坚合众国代表团在谈判过程中就今日签署的两国政府间《自由贸易协定》第18.10.30(b)(ix)条（知识产权执法）达成的以下谅解：

为履行第18.10.30(b)(ix)条义务， 美国应适用其法律¹ 及其任何修正案的相关规定， 韩国则应采纳以下要求： (a) 针对被指称侵权的材料向服务提供商提交有效的书面通知； (b) 如本函所述， 材料被移除或禁用且主张因错误或误认导致禁用的当事人提交有效的书面反通知。有效的书面通知指基本符合本函(a)项所列要素的通知， 有效的书面反通知指基本符合本函(b)项所列要素的反通知。

(a) 版权² 所有者或独家权利所有者授权代表向服务提供商公开指定的代表³提交有效的书面通知

为使向服务提供商发出的通知符合第18.10.30(b)(ix)条规定的相关要求， 该通知必须为书面通信， 可以电子方式提供， 并基本包含以下内容：

¹ 17 《美国法典》第512(c)(3)(A)条和第512(g)(3)条。

² 就本函件而言，“版权”包括相关权利，“作品”包括相关权利的客体。

³ 雙方理解，若代表的姓名、实体及电子地址、电话号码公布于服务提供商的网站公开可访问部分，并通过互联网向公众开放的注册表发布，或以其他适合韩国的形式或方式指定，则该代表被视为公开指定代表服务提供商接收通知。

- 1. The identity, address, telephone number, and electronic mail address of the complaining party (or its authorized agent);
- 2. Information reasonably sufficient to enable the service provider to identify the copyrighted work(s)⁴ claimed to have been infringed;
- 3. Information reasonably sufficient to permit the service provider to identify and locate the material residing on a system or network controlled or operated by it or for it that is claimed to be infringing, or to be the subject of infringing activity, and that is to be removed, or access to which is to be disabled;⁵
- 4. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- 5. A statement that the information in the notification is accurate;
- 6. A statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the complaining party is the holder of an exclusive right that is allegedly infringed, or is authorized to act on the owner’s behalf; and
- 7. The signature of the person giving notification.⁶

(b) Effective Written Counter-Notification by a Subscriber⁷ Whose Material Was Removed or Disabled as a Result of Mistake or Misidentification of Material

In order for a counter-notification to a service provider to comply with the relevant requirements set out in Article 18.10.30(b)(ix), that counter-notification must be a written

- 1. 投诉方（或其授权代理人）的身份、地址、电话号码及电子邮件地址；2. 足以使服务提供商识别被指称侵权的受版权保护的作品⁴ 的合理信息；3. 足以使服务提供商识别并定位被指称侵权或作为侵权活动对象且将被移除或禁用访问的材料，该材料存在于由其控制或运营或为其服务的系统或网络上的合理信息；⁵4. 声明投诉方善意相信所投诉的材料使用方式未经版权所有者、其代理人或法律授权；5. 声明通知中的信息准确；6. 具有足够可靠性标志的声明（如伪证处罚或同等法律制裁下的声明），表明投诉方是被指称侵权的专有权持有者或获授权代表所有者行事；以及7. 发出通知者的签名。⁶(b) 订阅用户因其材料被错误或误认而遭移除或禁用后提交的有效的书面反通知⁷

为使向服务提供商提交的反通知符合第18.10.30(b)(ix)条规定的相关要求，该反通知必须是一份书面

⁴ If multiple copyrighted works at, or linked to from, a single online site on a system or network controlled or operated by or for the service provider are covered by a single notification, a representative list of such works at, or linked to from, that site may be provided.

⁵ In the case of notifications regarding an information location tool pursuant to paragraph (b)(i)(D) of Article 18.10.30, the information provided must be reasonably sufficient to permit the service provider to locate the reference or link residing on a system or network controlled or operated by or for it, except that in the case of a notification regarding a substantial number of references or links at a single online site residing on a system or network controlled or operated by or for the service provider, a representative list of such references or links at the site may be provided, if accompanied by information sufficient to permit the service provider to locate the references or links.

⁶ A signature transmitted as part of an electronic communication satisfies this requirement.

⁷ For purposes of this letter, “subscriber” refers to the person whose material has been removed or disabled by a service provider as a result of an effective notification described in section (a) of this letter.

⁴ 如果服务提供商或其代表控制的系统或网络上的单一在线站点中或链接自该站点的多部受版权保护的作品被同一通知涵盖，可以提供该站点中或链接自该站点的此类作品的代表性列表。⁵ 对于依据第18.10.30条(b)(i)(D)款关于信息定位工具的通知，所提供的信息必须合理充分，以使服务提供商能够定位其控制或运营的系统或网络上的引用或链接，但对于服务提供商控制或运营的系统或网络上单一在线站点中存在大量引用或链接的情况，若附有足以使服务提供商定位这些引用或链接的信息，可以提供该站点中此类引用或链接的代表性列表。⁶ 作为电子通信一部分传输的签名满足此要求。⁷ 就本函而言，“订阅用户”指因其材料被服务提供商根据本函(a)节所述有效通知而移除或禁用的人。

communication, which may be provided electronically, that includes substantially the following:

- 8. The identity, address, and telephone number of the subscriber;
- 9. The identity of the material that has been removed or to which access has been disabled;
- 10. The location at which the material appeared before it was removed or access to it was disabled;
- 11. A statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material;
- 12. A statement that the subscriber agrees to be subject to orders of any court that has jurisdiction over the place where the subscriber’s address is located, or, if that address is located outside the Party’s territory, any other court with jurisdiction over any place in the Party’s territory where the service provider may be found, and in which a copyright infringement suit could be brought with respect to the alleged infringement;
- 13. A statement that the subscriber will accept service of process in any such suit; and
- 14. The signature of the subscriber.⁸

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

I have the further honor to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

通信（可通过电子方式提供），且实质上包含以下内容：

- 8. 订阅用户的身份、地址和电话号码；9. 被移除或禁用访问的材料身份；10. 材料在被移除或禁用访问前出现的位置；11. 一份具有足够可靠性标志的声明（如根据伪证处罚或同等法律制裁作出的声明），表明订阅用户善意相信材料因错误或误认而被移除或禁用；12. 一份声明，表明订阅用户同意接受对其地址所在地有管辖权的任何法院的命令，或如果该地址位于缔约方领土之外，则同意接受对服务提供商可能所在的缔约方领土内任何地点有管辖权的其他法院的命令，并且可在该法院就涉嫌侵权提起版权侵权诉讼；13. 一份声明，表明订阅用户将接受任何此类诉讼的送达程序；以及14. 订阅用户的签名。⁸

我荣幸地提议，本函及贵方确认贵国政府认同此理解的复函，将构成《自由贸易协定》的组成部分。

我进一步荣幸地确认，我国政府认同此理解，且贵函与本复函将构成《自由贸易协定》的组成部分。

此致，

Susan C. Schwab

⁸ A signature transmitted as part of an electronic communication satisfies this requirement.

⁸ 作为电子通信一部分传输的签名可满足此项要求。

[TRANSLATION]

June 30, 2007

The Honorable Susan C. Schwab
United States Trade Representative
Washington, D.C.

Dear Ambassador Schwab:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Chapter Eighteen (Intellectual Property Rights) of the Free Trade Agreement between our two Governments signed this day:

The Parties recognize the importance of preventing illegal copying and distribution of copyrighted works on university campuses and providing effective enforcement against book piracy. Therefore, consistent with Korea’s May 2004 Master Plan for Intellectual Property Rights, Korea agrees to continue to increase its efforts to improve awareness of copyright infringement activities and book piracy on university campuses and reduce illegal reproduction and distribution of copyrighted works. In furtherance thereof, Korea agrees to take the following actions as soon as possible, but no later than six months after the date this Agreement enters into force:

- 1) continue to implement policies that work to promote the use of legitimate materials by students, lecturers, bookstores, and photocopy shops on university campuses, and develop and implement further such policies, if necessary. Within this framework, seek cooperation and information from all universities, and consider the need for follow-up action;
- 2) enhance training activities in the territory of Korea on book-piracy enforcement, thereby raising awareness among enforcement personnel of illegal book printing activities as well as commercial scale operations of illegal reproductions of copyrighted works;
- 3) enhance enforcement activities with respect to underground book piracy operations; and
- 4) develop and pursue public education campaigns to raise general awareness in the public sector of illegal book printing activities as well as commercial scale operations of illegal reproductions of copyrighted works.

[翻译]

2007年6月30日

尊敬的苏珊·C·施瓦布 美国贸易
代表 华盛顿特区

尊敬的施瓦布大使：

我荣幸地确认，大韩民国与美利坚合众国代表团在关于今日签署的两国政府间《自由贸易协定》第十八章（知识产权）的谈判过程中达成以下谅解：

雙方认识到防止大学校园内非法复制和传播受版权保护的作品以及有效打击图书盗版的重要性。因此，根据韩国2004年5月的《知识产权总体规划》，韩国同意继续加大力度，提高对大学校园内版权侵权活动和图书盗版的认识，并减少受版权保护的作品的非法复制和传播。为此，韩国同意尽快采取以下行动，但不得迟于本协议生效之日起六个月：

- 1) 继续实施旨在促进大学校园内学生、讲师、书店和复印店使用合法材料的政策，并在必要时制定和实施更多此类政策。在此框架内，寻求所有大学的合作与信息，并考虑是否需要后续行动；
- 2) 加强韩国境内打击书籍盗版的培训活动，从而提高执法人员对非法书籍印刷活动以及受版权保护的作品非法复制的商业规模操作的认识；
- 3) 加强针对地下图书盗版活动的执法行动；
- 4) 开展并推进公共教育活动，提高公共部门对非法书籍印刷活动以及受版权保护的作品非法复制的商业规模操作的普遍认识。

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Sincerely,

[SGN/]
Hyun Chong Kim

我荣幸地提议，本函及贵方回函确认贵国政府认同此理解，应构成自由贸易协定的组成部分。

此致，[SGN/]金
玄忠

June 30, 2007

2007年6月30日

The Honorable Hyun Chong Kim
Minister for Trade
Seoul, Republic of Korea

Dear Minister Kim:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Chapter Eighteen (Intellectual Property Rights) of the Free Trade Agreement between our two Governments signed this day:

The Parties recognize the importance of preventing illegal copying and distribution of copyrighted works on university campuses and providing effective enforcement against book piracy. Therefore, consistent with Korea’s May 2004 Master Plan for Intellectual Property Rights, Korea agrees to continue to increase its efforts to improve awareness of copyright infringement activities and book piracy on university campuses and reduce illegal reproduction and distribution of copyrighted works. In furtherance thereof, Korea agrees to take the following actions as soon as possible, but no later than six months after the date this Agreement enters into force:

- 1) continue to implement policies that work to promote the use of legitimate materials by students, lecturers, bookstores, and photocopy shops on university campuses, and develop and implement further such policies, if necessary. Within this framework, seek cooperation and information from all universities, and consider the need for follow-up action;
- 2) enhance training activities in the territory of Korea on book-piracy enforcement, thereby raising awareness among enforcement personnel of illegal book printing activities as well as commercial scale operations of illegal reproductions of copyrighted works;
- 3) enhance enforcement activities with respect to underground book piracy operations; and
- 4) develop and pursue public education campaigns to raise general awareness in the public sector of illegal book printing activities as well as commercial scale operations of illegal reproductions of copyrighted works.

尊敬的玄正金 贸易部长 首尔，
大韩民国

尊敬的金部长：

我荣幸地确认收到您今日的来信， 内容如下：

我荣幸地确认大韩民国与美利坚合众国代表团在关于我们两国政府今日签署的《自由贸易协定》第十八章（知识产权）的谈判过程中达成的以下谅解：

雙方认识到防止在大学校园内非法复制和传播受版权保护的作品以及有效打击图书盗版的重要性。因此，根据韩国2004年5月的《知识产权总体规划》，韩国同意继续加大努力，提高对大学校园内版权侵权活动和图书盗版的认识，并减少受版权保护的作品的非法复制和传播。为此，韩国同意尽快采取以下行动，但不得迟于本协议生效之日起六个月：

- 1) 继续实施旨在促进大学校园内的学生、讲师、书店和复印店使用合法材料的政策，并在必要时制定和实施更多此类政策。在此框架内，寻求所有大学的合作与信息，并考虑是否需要后续行动；
- 2) 加强韩国境内关于打击书籍盗版的培训活动，从而提高执法人员对非法书籍印刷活动以及受版权保护的作品非法复制的商业规模操作的认识；
- 3) 加强对地下图书盗版活动的执法行动；
- 4) 开展并推进公共教育活动，以提高公共部门对非法书籍印刷活动以及受版权保护的作品非法复制的商业规模操作的普遍认识。

The Honorable Hyun Chong Kim
Page Two

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

I have the further honor to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

尊敬的玄正金 第二页

我荣幸地提议，本函及贵方复函确认贵国政府认同此理解，将构成《自由贸易协定》的组成部分。

我进一步荣幸地确认，我国政府认同此理解，且贵方来函与本复函将构成《自由贸易协定》的组成部分。

此致，

苏珊·C·施瓦布

[TRANSLATION]

June 30, 2007

The Honorable Susan C. Schwab
United States Trade Representative
Washington, D.C.

Dear Ambassador Schwab:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Chapter Eighteen (Intellectual Property Rights) of the Free Trade Agreement between our two Governments signed this day:

The Parties agree on the objective of shutting down Internet sites that permit the unauthorized reproduction, distribution, or transmission of copyright works, of regularly assessing and actively seeking to reduce the impact of new technological means for committing online copyright piracy, and of providing generally for more effective enforcement of intellectual property rights on the Internet. Korea agrees that internet piracy of works and other subject matter protected by copyright¹ (including unauthorized reproduction and distribution of such works and other subject matter on the Internet) is a matter of priority for law enforcement of intellectual property rights. Korea also agrees on the objective of shutting down Internet sites that permit the unauthorized downloading (and other forms of piracy) of copyright works, including so-called webhard services, and providing for more effective enforcement of intellectual property rights on the Internet, including in particular with regard to peer-to-peer (P2P) services. To this end, Korea will strengthen enforcement of intellectual property rights in Korea, and work to prevent, investigate, and prosecute Internet piracy. As part of this effort, Korea will work with the private sector and with the United States and other foreign authorities.

In furtherance thereof, Korea agrees to issue as soon as possible, but no later than six months after the date the Agreement enters into force, a policy directive establishing clear jurisdiction for a division or joint investigation team to engage in effective enforcement against online piracy. This team will investigate and initiate criminal actions to address online piracy, including with respect to U.S. and other foreign works, whether *ex officio* or at the request of a right holder. The team will take these actions in a manner that is transparent to right holders. In addition to prosecuting direct infringers, Korea agrees to prosecute individuals and companies that profit from developing and maintaining services that effectively induce infringement.

¹ For purposes of this letter, “copyright” also includes related rights.

[翻译]

2007年6月30日

尊敬的苏珊·C·施瓦布 美国贸易
代表 华盛顿特区

尊敬的施瓦布大使：

我荣幸地确认，大韩民国与美利坚合众国代表团在关于今日签署的两国政府间《自由贸易协定》第十八章（知识产权）的谈判过程中达成如下谅解：

雙方同意以实现以下目标：关闭允许未经授权复制、分发或传输版權作品的互聯網站點；定期评估并积极寻求减少新技术手段对在線版權盜版的影响；以及总体上为互联网上的知识产权执法提供更有效的保障。韩国同意，作品及其他受版权保护客体的網絡盜版（包括此类作品及其他客体在互联网上的未經授權的複製和分發）是知识产权执法的优先事项。韩国还同意以实现以下目标：关闭允许未經授權的下載（及其他形式的盜版）版權作品的互聯網站點，包括所谓的网络硬盤服務，并为互联网上的知识产权提供更有效的执法保障，特别是针对點對點（P2P）服務。为此，韩国将加强国内的知识产权执法，并致力于预防、调查和起诉網絡盜版。作为此项努力的一部分，韩国将与私營部門以及美国和其他外國當局合作。

为此，韩国同意尽快但不迟于本协议生效之日起六个月后发布一项政策指令，明确设立一个部门或聯合調查組的管辖权，以有效打击在線盜版。该团队将调查并启动刑事行動以应对在線盜版，包括针对美国及其他外国作品的行为，无论是依职权还是应权利持有人的请求。团队将以对权利持有人透明的方式采取这些行动。除起诉直接侵權者外，韩国还同意起诉那些通过开发和维护有效诱导侵权的服务而获利的个人和公司。

¹ 就本函而言，“版权”亦包括相关权利。

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Sincerely,

[*SGN*]
Hyun Chong Kim

我荣幸地提议， 本函及贵方回函确认贵国政府认同此理解， 应构成自由贸易协定的组成部分。

此致， [
SGN]/
金玄忠

June 30, 2007

2007年6月30日

The Honorable Hyun Chong Kim
Minister for Trade
Seoul, Republic of Korea

尊敬的玄正金 贸易部长 首尔,
大韩民国

Dear Minister Kim:

尊敬的金部长:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

我荣幸地确认收到您今日的来信, 内容如下:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Chapter Eighteen (Intellectual Property Rights) of the Free Trade Agreement between our two Governments signed this day:

我荣幸地确认大韩民国与美利坚合众国代表团在关于我们两国政府今日签署的自由贸易协定第十八章 (知识产权) 的谈判过程中达成的以下谅解:

The Parties agree on the objective of shutting down Internet sites that permit the unauthorized reproduction, distribution, or transmission of copyright works, of regularly assessing and actively seeking to reduce the impact of new technological means for committing online copyright piracy, and of providing generally for more effective enforcement of intellectual property rights on the Internet. Korea agrees that internet piracy of works and other subject matter protected by copyright¹ (including unauthorized reproduction and distribution of such works and other subject matter on the Internet) is a matter of priority for law enforcement of intellectual property rights. Korea also agrees on the objective of shutting down Internet sites that permit the unauthorized downloading (and other forms of piracy) of copyright works, including so-called webhard services, and providing for more effective enforcement of intellectual property rights on the Internet, including in particular with regard to peer-to-peer (P2P) services. To this end, Korea will strengthen enforcement of intellectual property rights in Korea, and work to prevent, investigate, and prosecute Internet piracy. As part of this effort, Korea will work with the private sector and with the United States and other foreign authorities.

雙方同意以实现以下目标: 关闭允许未经授权复制、分发或传输版权作品的互聯網站點, 定期评估并积极寻求减少新技术手段对在线版权盗版的影响, 以及总体上为互联网上的知识产权执法提供更有效的保障。韩国同意, 受版权保护的作品和其他主题的网络盗版¹ (包括此类作品和其他主题在互联网上的未经授权复制和分发) 是知识产权执法的优先事项。韩国还同意以实现以下目标: 关闭允许未经授权下载 (及其他形式的盗版) 版权作品的互聯網站點, 包括所谓的网络硬盘服务, 并为互联网上的知识产权执法提供更有效的保障, 特别是针对点对点 (P2P) 服务。为此, 韩国将加强国内的知识产权执法, 并努力预防、调查和起诉网络盗版。作为此项努力的一部分, 韩国将与私营部门以及美国和其他外国当局合作。

In furtherance thereof, Korea agrees to issue as soon as possible, but no later than six months after the date the Agreement enters into force, a policy directive establishing clear jurisdiction for a division or joint investigation team to engage in effective enforcement against online piracy. This team will investigate and initiate criminal actions to address online piracy, including with respect to U.S. and other foreign works, whether *ex officio* or at the request of a right holder. The team will take these actions in a manner that is transparent to right holders. In addition to prosecuting direct infringers, Korea agrees to prosecute individuals and companies that profit from developing and maintaining services that effectively induce infringement.

为此, 韩国同意尽快发布一项政策指令, 最迟不晚于协议生效后六个月, 明确设立一个部门或联合调查组的管辖权, 以有效打击在线盗版。该团队将调查并启动刑事行動, 以应对在线盗版, 包括涉及美国及其他外国作品的行为, 无论是依职权还是应权利持有人的请求。团队将以对权利持有人透明的方式采取这些行动。除起诉直接侵權者外, 韩国还同意起诉那些通过开发和维护有效诱导侵权的服务而获利的个人和公司。

¹ For purposes of this letter, “copyright” also includes related rights.

¹ 就本函而言, “版权”亦包括相关权利。

The Honorable Hyun Chong Kim
Page Two

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

I have the further honor to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

尊敬的玄正金 第二页

我荣幸地提议，本函及贵方确认贵国政府认同此理解的复函应构成《自由贸易协定》的组成部分。

我进一步荣幸地确认，我国政府认同此理解，且贵方来函与本复函应构成《自由贸易协定》的组成部分。

此致，

苏珊·C·施瓦布

June 30, 2007

The Honorable Hyun Chong Kim
Minister for Trade
Seoul, Republic of Korea

Dear Minister Kim:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and the Republic of Korea during the course of negotiations regarding Chapter Eighteen (Intellectual Property Rights) of the Free Trade Agreement between our two Governments signed this day:

Neither the United States nor Korea will invoke Article 22.4 of the Agreement with respect to the other Party’s obligations under Article 18.9.5(b) of the Agreement during the first 18 months after the date the Agreement enters into force. Should either Party have concerns with respect to the other Party’s compliance with its obligations under Article 18.9.5(b) during the first 18 months after the date the Agreement enters into force, the United States and Korea will, consistent with Article 22.3 of the Agreement and at the request of either Party, consult with a view to reaching a mutually satisfactory resolution of those concerns.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

2007年6月30日

尊敬的玄正金 贸易部长 首尔，
大韩民国

尊敬的金部长：

我荣幸地确认，美利坚合众国与大韩民国代表团在就今日签署的两国政府间《自由贸易协定》第十八章（知识产权）进行谈判过程中达成如下谅解：

在协定生效后的前18个月内，美国或韩国均不得援引协议第22.4条追究另一方根据协议第18.9.5(b)条所承担的义务。若任一方对另一方在协定生效后前18个月内履行第18.9.5(b)条义务的情况存在关切，美韩两国将根据协议第22.3条，在任一方请求下进行磋商，以期达成双方满意的解决方案。

我谨提议，本函及贵方确认贵国政府认同此谅解的复函，应构成《自由贸易协定》不可分割的组成部分。

此致，

苏珊·C·施瓦布

[TRANSLATION]

June 30, 2007

The Honorable Susan C. Schwab
United States Trade Representative
Washington, D.C.

Dear Ambassador Schwab:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and the Republic of Korea during the course of negotiations regarding Chapter Eighteen (Intellectual Property Rights) of the Free Trade Agreement between our two Governments signed this day:

Neither the United States nor Korea will invoke Article 22.4 of the Agreement with respect to the other Party’s obligations under Article 18.9.5(b) of the Agreement during the first 18 months after the date the Agreement enters into force. Should either Party have concerns with respect to the other Party’s compliance with its obligations under Article 18.9.5(b) during the first 18 months after the date the Agreement enters into force, the United States and Korea will, consistent with Article 22.3 of the Agreement and at the request of either Party, consult with a view to reaching a mutually satisfactory resolution of those concerns.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

I have the further honor to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

[SGN/]
Hyun Chong Kim

[翻译]

2007年6月30日

尊敬的苏珊·C·施瓦布 美国贸易
代表 华盛顿特区

尊敬的施瓦布大使：

我荣幸地确认收到您今日的来信， 内容如下：

我荣幸地确认美利坚合众国与大韩民国代表团在谈判过程中就今日签署的两国政府间《自由贸易协定》第十八章（知识产权）达成的以下谅解：

在协议生效后的前18个月内， 美国或韩国均不会针对另一方根据协议第18.9.5(b)条所承担的义务援引协议第22.4条。若任一方在协议生效后前18个月内对另一方履行协议第18.9.5(b)条义务的情况存在关切， 美国和韩国将根据协议第22.3条， 在任一方请求下进行磋商， 以期达成双方满意的解决方案。

我谨提议， 本函及贵方确认贵国政府认同此理解的复函， 将构成《自由贸易协定》不可分割的一部分。

我进一步荣幸地确认， 我国政府认同此理解， 且贵方来函与本复函将构成《自由贸易协定》不可分割的一部分。

此致，

[SGN/] 金玄忠