

Chapter 17
Intellectual Property

Article 17.1: Definitions

For the purposes of this Chapter:

- (a) **broadcasting** means the transmission to the public by wireless means, including 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 organisation or with its consent;
- (b) **communication to the public of a performance or a phonogram** has the meaning in Article 2(g) of the *WIPO Performances and Phonograms Treaty*;
- (c) **fixation** in relation to performances and phonograms means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;
- (d) **intellectual property** refers to all categories of intellectual property that are the subject of Sections 1 to 7 of Part II of the TRIPS Agreement, namely: copyright and related rights; trade marks; geographical indications; industrial designs; patents; layout designs (topographies) of integrated circuits; and protection of undisclosed information¹⁷⁻¹;
- (e) **performance** refers to a performance fixed in a phonogram unless otherwise specified;
- (f) **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;
- (g) **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;
- (h) **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;
- (i) **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;

¹⁷⁻¹ For the purposes of this Chapter, intellectual property also includes rights in plant varieties.

第17章 知识产权

第17.1条：定义

本章规定如下：

- (a) 广播是指通过无线方式向公众传播声音或声音和图像，或其表现，包括向公众提供解密方法的加密信号的无线传输，其中广播组织向公众提供解密方法或经其同意；
- (b) 表演或音像制品向公众传播具有世界知识产权组织表演和录音条约第2条(g)中的含义；
- (c) 与表演和音像制品相关的固定，是指声音的表现，或其表现，从中可以感知、复制或传播的声音，通过设备；
- (d) 知识产权是指与贸易有关的知识产权协定第二部分第1至7节所指的所有知识产权类别，即：版权及相关权利；商标；地理标志；工业设计；专利；集成电路的布线设计（拓扑结构）；以及未披露信息的保护¹⁷⁻¹；
- (e) 表演是指固定在音像制品中的表演，除非另有规定；(f) 表演者是指演员、歌手、音乐家、舞蹈家以及其他表演文学或艺术作品或民间文学艺术表达的人；
- (g) 音像制品是指表演声音或其他声音的固定，或声音的表现，但不以电影或其他视听作品中包含的固定形式存在；
- (h) 录音制作人是指发起并负责首次固定表演声音或其他声音，或声音的表现形式的人，或法人；
- (i) 表演的出版或录音是指经权利持有人同意，向公众提供表演的副本或录音，并且副本是以合理数量向公众提供的；

¹⁷⁻¹ 根据本章的规定，知识产权也包括植物品种的权利。

- (j) **WIPO** means the World Intellectual Property Organization; and
- (k) **work** includes a cinematographic work.

Article 17.2: Purpose

The Parties recognise that it is important to provide adequate and effective protection and enforcement of intellectual property rights, promote efficient and transparent intellectual property systems and achieve an appropriate balance between the legitimate interests of intellectual property right holders and of users in subject matter protected by intellectual property rights.

Article 17.3: General Provisions

- 1. The Parties reaffirm their existing rights and obligations with respect to each other under the TRIPS Agreement and any other multilateral intellectual property agreements to which both are party.
- 2. Nothing in this Chapter shall prevent a Party from adopting appropriate measures to prevent:
 - (a) the abuse of intellectual property rights by right holders or the resort to practices that unreasonably restrain trade or adversely affect the international transfer of technology; and
 - (b) anticompetitive practices that may result from the abuse of intellectual property rights;provided that such measures are consistent with this Agreement.
- 3. Each Party shall give effect to the provisions of this Chapter and may, but shall not be obliged to, implement in its domestic law more extensive protection than is required by this Chapter, provided that such protection does not contravene the provisions of this Chapter.

Article 17.4: International Agreements

- 1. Each Party shall ratify or accede to the following agreements by 1 January 2009 in a manner consistent with its domestic law and subject to the fulfilment of its necessary internal requirements:
 - (a) the *Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (1974) (the Brussels Convention);
 - (b) the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1980); and

- (j) WIPO是指世界知识产权组织；以及(k) 作品包括电影作品。

第十七条第2条：目的

缔约方认识到，提供充分有效的知识产权保护与执行、促进高效透明的知识产权制度以及实现知识产权权利人与受知识产权保护的主题的使用者之间的合法利益之间的适当平衡，非常重要。

第十七条第3条：一般规定

- 1. 缔约方重申其根据与贸易有关的知识产权协定及双方均为缔约方的任何其他多边知识产权协定所享有的现有权利和义务。
- 2. 本章的任何规定均不得阻止一方采取适当措施以防止：
 - (a) 权利持有人对知识产权的滥用或采取不合理限制贸易或对国际技术转让产生不利影响的惯例；以及 (b) 可能因知识产权滥用而产生的反竞争行为；但前提是此类措施与本协议一致。

- 3. 每一方应当适用本章的规定，并且可以，但不是必须的，在其国内法中实施比本章要求更广泛的保护，只要这种保护不与本章的规定相抵触。

第17.4条：国际协议

每一方应于2009年1月1日前，根据其国内法并满足其必要的内部要求，批准或加入下列协议：

- (a) 关于卫星传输节目信号分布的公约 (1974) (布鲁塞尔公约)； (b) 布达佩斯条约关于为专利程序目的而进行微生物国际保藏的国际承认 (1980)；以及

(c) the *International Convention for the Protection of New Varieties of Plants* (1991).

2. Each Party shall undertake reasonable efforts to ratify or accede to the following agreements, in a manner consistent with its domestic law and subject to the fulfilment of its necessary internal requirements:

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

(b) the *Patent Cooperation Treaty* (1970); and

(c) the *Patent Law Treaty* (2000).

Article 17.5: National Treatment

1. In respect of all intellectual property rights covered in this Chapter, each Party shall accord to persons of the other Party treatment no less favourable than it accords to its own persons with regard to the protection¹⁷⁻² and enjoyment of such intellectual property rights and any benefits derived from such rights, subject to the exceptions provided in multilateral intellectual property agreements to which either Party is, or becomes, a contracting party.

2. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a person 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

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

3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO in relation to the acquisition or maintenance of intellectual property rights.

Article 17.6: Application of Agreement to Existing Subject Matter

1. Except as it provides otherwise, including Article 17.32, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into

¹⁷⁻² For the purposes of this Article, **protection** includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights, as well as those matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this Article, **protection** also includes the provisions concerning the prohibition on circumvention of effective technological measures and rights management information specified in Articles 17.28 and 17.29 respectively.

(c) 保护植物新品种国际公约 (1991)。

2. 每一方应当尽合理努力批准或加入下列协议，其方式应与其国内法一致，并应满足其必要的内部要求：

(a) 《马德里协定有关商标国际注册的议定书》（1989年）；

(b) 《专利合作条约》（1970年）；以及 (c) 《专利法条约》（2000年）。

第17.5条：国民待遇

1. 对于本章涵盖的所有知识产权，每一方应当给予另一方人员不低于其给予本国人员关于知识产权保护的待遇¹⁷⁻²

并享受该等知识产权及其产生的任何利益，但前提是遵守任何一方为缔约方或将成为缔约方的多边知识产权协定中规定的例外情况。

2. 一方可以在其司法和行政程序方面背离第1款，包括要求另一方人员指定其在领土内的送达地址，或任命其在领土内的代理人，前提是该背离：

(a) 为确保符合与本章节不一致的法律和法规所必需的；以及 (b) 不得以构成伪装的贸易限制的方式应用。

3. 第1段不适用于在世界知识产权组织主持下缔结的多边协议中提供的与知识产权的取得或维持相关的程序。

第十七条第十七条第6条：协议适用于现有主题

1. 除其另有规定外，包括第17.32条在内，本章节就进入日期时存在的所有主题产生义务。

¹⁷⁻² 就本条而言，保护包括影响知识产权的可用性、获取、范围、维持和执行的事项，以及影响本章节特别涵盖的知识产权使用的那些事项。此外，就本条而言，保护还包括第十七条第28条和第十七条第29条分别规定的关于禁止规避有效技术措施和权利管理信息的条款。

force of this Agreement, 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.

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

Article 17.7: Application of Agreement to Prior Acts

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

Article 17.8: Industrial Property

1. Each Party shall provide a system that permits owners to assert industrial property rights and interested parties to challenge such rights through administrative or judicial means, or both.

2. Each Party shall endeavour to simplify and streamline its administrative procedures and participate in international fora, including the WIPO fora, dealing with reform and development of the industrial property system.

TRADE MARKS

Article 17.9: Trade Marks Protection

Each Party shall provide that trade marks shall include trade marks in respect of goods and services, collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in its domestic law. Each Party shall provide, in accordance with its domestic law, that a sound may constitute a sign, and a combination of colours may form all or part of a sign. Each Party may provide trade mark protection for scents. The Parties shall not require, as a condition of registration, that trade marks be visually perceptible. A Party may require that trade marks be represented graphically.

Article 17.10: Use of Identical or Similar Signs

Each Party shall provide that the owner of a registered trade mark shall have the exclusive right to prevent third parties not having the owner's consent from using in the course of trade identical or similar signs, including subsequent geographical indications, for goods or services that are related to those goods or services in respect

本协议的效力，即在所主张保护的缔约方领土上在该日期受到保护，或符合本章规定的保护标准，或随后符合该标准。

2. 除本章另有规定外，缔约方不得被要求恢复在本协议生效时已在其主张保护领土内落入公有领域的主题的保护。

第17.7条：协议对先前行为的适用

本章不产生与本协议生效前发生的任何行为有关的义务。

第17.8条：工业产权

1. 每一方应提供一套系统，允许所有者主张工业产权，并允许利害关系方通过行政或司法手段挑战这些权利，或两者兼有。

2. 每一方应努力简化并精简其行政程序，并参与处理工业产权制度改革和发展的国际论坛，包括世界知识产权组织论坛。

商标

第17.9条：商标保护

每一方应规定商标包括商品和服务的商标、集体商标和认证商标。一方没有义务在其国内法中将认证商标作为单独类别处理。每一方应根据其国内法规定，声音可以构成标志，颜色组合可以构成标志的全部或部分。每一方可以提供气味商标保护。双方不得要求商标在注册时必须是视觉上可感知的。一方可以要求商标以图形化方式表示。

第17.10条：相同或近似的标志的使用

每一方应当规定，注册商标的所有者应当享有独占权，以防止第三方未经商标所有者同意，在贸易过程中使用与已注册商标的商品或服务相关的商品或服务中，相同或近似的标志，包括后续的地理标志，如果这种使用会导致混淆。

of which the trade mark is registered, where such use would result in a likelihood of confusion.¹⁷⁻³

Article 17.11: Exceptions to Trade Mark Rights

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

Article 17.12: Well Known Trade Marks

- Article 6bis of the *Paris Convention for the Protection of Industrial Property* shall apply to goods or services that are not identical or similar to those identified by a well known trade mark¹⁷⁻⁴, whether registered or not, provided that use of that trade mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trade mark, and provided that the interests of the owner of the trade mark are likely to be damaged by such use.
- Each Party recognises the importance of the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* (1999) as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO, and shall be guided by the principles contained in this Recommendation.

Article 17.13: Trade Mark System of Protection

- Each Party shall provide a system of protection for trade marks that provides procedures for examination as to substance and formalities, opposition, and cancellation, which shall include, but not be limited to:
- (a) providing to the applicant a communication in writing, which may be electronic, of the reasons for any refusal to register a trade mark;
 - (b) providing the opportunity for the applicant to respond to communications from the authorities responsible for registration of trade marks, to contest an initial refusal, and to appeal judicially any final refusal to register a trade mark;
 - (c) providing an opportunity for interested parties to oppose the registration of a trade mark or to seek cancellation of a trade mark; and
 - (d) requiring that decisions in opposition or cancellation proceedings be reasoned and in writing.

¹⁷⁻³ It is understood that likelihood of confusion is to be determined under the domestic trade mark law of each Party.
¹⁷⁻⁴ In determining whether a trade mark is well known, the reputation of the trade mark need not extend beyond the sector of the public that normally deals with the relevant goods or services.

其中，商标注册的商品，如果这种使用会导致混淆，则¹⁷⁻³。

第17.11条：商标权的例外

每一方可以对商标所授予的权利提供有限的例外，例如描述性词语的合理使用，但此类例外应顾及商标所有者和第三方的合法利益。

第17.12条：驰名商标

- 保护工业产权巴黎公约第6条之二应当适用于与由驰名商标¹⁷所识别的商品或服务不相同或不相类似的产品或服务⁴，
，无论是否注册，只要在该商标与这些商品或服务相关联的使用中表明这些商品或服务与该商标所有者之间存在联系，并且该商标所有者的利益可能因这种使用而受损。
- 每一方承认保护驰名商标规定联合建议书（1999年）的重要性，该建议书由保护工业产权巴黎联盟大会和世界知识产权组织大会通过，并应受该建议书中包含的原则的指导。

第17.13条：商标保护制度

- 每一方应当提供商标保护制度，该制度应包括实质和形式审查、异议和取消的程序，但不仅限于：
- (a) 向申请人提供书面（可能是电子形式的）关于拒绝注册商标的理由的通信；(b) 为申请人提供回应负责商标注册的当局的通信的机会，对初步拒绝提出异议，并对最终拒绝注册商标的司法裁决提出上诉；(c) 为利害关系方提供反对商标注册或寻求商标取消的机会；以及(d) 要求异议或取消程序中的决定必须有理由且为书面形式。

¹⁷⁻³ 理解为混淆的可能性应根据每一方的国内商标法确定。¹⁷⁻⁴ 在确定商标是否驰名时，该商标的声誉无需超出通常处理相关商品或服务的公众范围。

Article 17.14: Electronic Trade Marks System

Each Party shall provide, to the maximum extent practical:

- (a) a system for the electronic application, processing, registration and maintenance of trade marks; and
- (b) a publicly available electronic information system of registered trade marks.

Article 17.15: Term of Protection for Trade Marks

Each Party shall provide that initial registration of a trade mark shall be for a term of no less than 10 years.

Article 17.16: Classification of Goods and Services

Each Party shall maintain a trade mark classification system that is consistent with the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* of June 15, 1957, as amended.

Article 17.17: Geographical Indications

1. Each Party shall recognise that geographical indications may be protected through a trade mark or *sui generis* system or other legal means.
2. Each Party shall provide the means for persons of the other Party to apply for protection of geographical indications. Each Party shall accept applications without the requirement for intercession by a Party on behalf of its persons, and shall:
 - (a) process applications for geographical indications with a minimum of formalities;
 - (b) make its regulations governing filing of such applications readily available to the public;
 - (c) ensure that applications for geographical indications are published for opposition and provide procedures for:
 - (i) opposing geographical indications before registration; and
 - (ii) cancellation of any registered geographical indications;
 - (d) ensure that measures governing the filing of applications for geographical indications set out clearly the procedures for such actions

第17.14条： 电子商标系统

每一方应尽最大可能提供：

- (a) 商标电子申请、处理、注册和维持的系统； 以及 (b) 公众可获取的注册商标电子信息系统。

第17.15条： 商标保护期限

每一方应当规定， 商标初始注册的期限不得少于10年。

第17.16条： 商品和服务分类

每一方应当维持一个与1957年6月15日签订的《关于商品和服务国际分类的尼斯协定》及其修正案一致的商标分类制度。

第17.17条： 地理标志

1. 每一方应当承认地理标志可以通过商标或特殊标志制度或其他法律手段得到保护。
2. 每一方应当为另一方人员申请地理标志保护提供途径。每一方应当接受申请， 无需其代表另一方人员从中斡旋， 并且应当：
 - (a) 以最低限度的形式要求处理地理标志申请； (b) 使其此类申请的提交规定易于公众获取； (c) 确保地理标志申请公布以供异议， 并提供程序以： (i) 在注册前对地理标志提出异议； 以及 (ii) 已注册地理标志的撤销； (d) 确保地理标志申请提交的规则明确说明此类行为的程序

and shall include contact information sufficient for applicants to obtain specific procedural guidance regarding the processing of those applications; and

- (e) provide that the grounds for refusing an application for protection of a geographical indication, or for opposing such an application, include the following¹⁷⁻⁵:
 - (i) the geographical indication is confusingly similar to a trade mark that is the subject of a pre-existing good-faith pending application or registration; and
 - (ii) the geographical indication is confusingly similar to a pre-existing trade mark, the rights to which have been acquired through use in good faith in the territory of the Party.

COUNTRY NAMES

Article 17.18: Country Names

Each Party shall provide the legal means for interested parties to prevent commercial use of country names of the other Party in relation to goods in a manner which is likely to mislead consumers as to the origin of such goods.

PATENTS

Article 17.19: Availability of Patents

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

Article 17.20: Exceptions to Patent Rights

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

¹⁷⁻⁵ Without prejudice, final decisions on the matters covered in Article 17.17.2(e) shall be taken according to each Party’s domestic law.

并应包括足够的联系方式，以便申请人获取关于处理这些申请的特定程序指导；并

- (e) 规定拒绝地理标志保护申请或反对该申请的理由包括以下¹⁷⁻⁵

:

- (i) 该地理标志与一方领土内通过善意使用而获得的在先商标相同或近似，且该在先商标是善意在审申请或注册的客体；以及 (ii) 该地理标志与在先商标相同或近似，且该在先商标的权利是在一方领土内通过善意使用而获得的。

国家名称

第17.18条：国家名称

每一方应当为利害关系方提供法律手段，以防止他方将国家名称用于商品，且该使用方式可能误导消费者对商品来源的判断。

专利

第17.19条：专利的可获得性

每一方应当使任何发明（无论是产品或工艺）在所有技术领域内均可获得专利，前提是发明是新颖的、涉及创造性步骤且可工业应用。就本条而言，一方可以将术语“创造性步骤”和“可工业应用”分别视为与术语“非显而易见”和“有用的”同义。

第17.20条：专利权的例外

一方可以提供有限的例外，以限制专利授予的独占权利，前提是这些例外不会与专利的正常利用产生不合理冲突，并且不会不合理地损害专利权人的合法利益，同时考虑第三方的合法利益。

¹⁷⁻⁵ 不损害任何一方，第17.17.2(e)条所述事项的最终决定应根据每一方的国内法作出。

Article 17.21: Patent System of Protection

- 1. Each Party shall provide an opportunity, either before or after grant, for interested parties to oppose the grant of a patent or to seek its revocation or cancellation¹⁷⁻⁶.
- 2. Each Party shall provide that a patent may only be revoked or cancelled on grounds that would have justified a refusal to grant the patent.
- 3. Notwithstanding paragraph 2, a Party may also provide that a patent may be revoked or cancelled on the basis of fraud, or that the patent is used in a manner determined to be anticompetitive in a judicial proceeding¹⁷⁻⁷.

Article 17.22: Grace Period for Patents

- Neither Party shall use the information contained in a public disclosure to prevent patentability due to a lack of novelty or inventive step if the public disclosure:
- (a) was made or authorised by, or derived from, the patent applicant; and
 - (b) occurs within 12 months prior to the date of filing of the application in the territory of the Party.

Article 17.23: Classification of Patents

Each Party shall maintain a patent classification system that is consistent with the *Strasbourg Agreement Concerning the International Patent Classification* of March 24, 1971, as amended.

DOMAIN NAMES

Article 17.24: Dispute Settlement and Registration Database

- 1. Each Party shall require that the management of its country-code top-level domain (ccTLD) provide an appropriate procedure for the settlement of disputes, based on the principles established in the Uniform Domain-Name Dispute-Resolution Policy.
- 2. Each Party shall require that the management of its ccTLD provide online public access to a reliable and accurate database of domain-name registrations in accordance with each Party’s law regarding protection of personal data.

¹⁷⁻⁶ For the purposes of this Article, a Party may treat the term “cancellation” as synonymous with “revocation” and the term “cancelled” as synonymous with “revoked”.
¹⁷⁻⁷ Where a Party provides that misrepresentation or inequitable conduct are grounds for revocation or cancellation of a patent, it may continue to so provide.

第17.21条：保护专利制度

- 1. 每一方应当在授予专利之前或之后，为利害关系方提供机会，以反对授予专利或寻求其撤销或取消¹⁷⁻⁶。
- 2. 每一方应当规定，专利只能基于本应构成拒绝授予专利的理由被撤销或取消。
- 3. 不论第2段如何规定，一方也可以规定，基于欺诈，专利可以被撤销或取消，或者规定专利在司法程序中被认定为具有反竞争性¹⁷⁻⁷。

第17.22条：专利宽限期

- 任何一方不得利用公开披露中包含的信息，以缺乏新颖性或创造性步骤为由，防止专利性，如果公开披露：
- (a) 是由专利申请人作出或授权的；以及 (b) 发生在申请提交之日起12个月内的缔约方领土内。

第17.23条：专利分类

每一方应维持一个与1971年3月24日修订的《关于国际专利分类的斯特拉斯堡协定》一致的专利分类系统。

域名

第17.24条：争议解决和注册数据库

- 1. 每一方应要求其国家代码顶级域名（ccTLD）的管理机构根据《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. 每一方应当要求其国家代码顶级域名（ccTLD）管理机构根据每一方关于个人数据保护的律，提供对可靠且准确的域名注册数据库的在线公共访问。

¹⁷⁻⁶ 根据本条文的宗旨，缔约方可以将“取消”一词视为与“撤销”一词同义，并将“已取消”一词视为与“已撤销”一词同义。¹⁷⁻⁷ 如果缔约方规定虚假陈述或不公平行为是撤销或取消专利的理由，它可以继续这样做。

COPYRIGHT

Article 17.25: Right of Reproduction

1. Each Party shall provide that authors¹⁷⁻⁸ of literary and artistic works have the right to authorise or prohibit¹⁷⁻⁹ all reproductions of their works, in any manner or form, permanent or temporary (including temporary storage in material form)¹⁷⁻¹⁰.
2. The Parties reaffirm that it is a matter for each Party’s law to prescribe that works shall not be protected by copyright unless they have been fixed in some material form.

RELATED RIGHTS

Article 17.26: Right of Reproduction

1. Each Party shall provide that performers, in respect of their performances, and producers of phonograms, in respect of their phonograms¹⁷⁻¹¹, have the right to authorise or prohibit all reproductions, in any manner or form, permanent or temporary (including temporary storage in material form)¹⁷⁻¹².
2. The Parties reaffirm that it is a matter for each Party’s law to prescribe that performances and phonograms shall not be protected by related rights unless they have been fixed in some material form.

¹⁷⁻⁸ References to “authors” in this Chapter refer also to any successors in interest.

¹⁷⁻⁹ For the purposes of paragraph 1 of Article 17.25 and paragraph 1 of Article 17.26, a right to authorise or prohibit means an exclusive right. For avoidance of doubt, in the case of Chile, a right to authorise also means an exclusive right.

¹⁷⁻¹⁰ It is consistent with this Agreement to provide exceptions and limitations for temporary acts of reproduction which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable (a) a lawful transmission in a network between third parties by an intermediary; or (b) a lawful use of a work; and which have no independent economic significance.

¹⁷⁻¹¹ References to “performers” and “producers of phonograms” in this Chapter refer also to any successors in interest.

¹⁷⁻¹² It is consistent with this Agreement to provide exceptions and limitations for temporary acts of reproduction of performances or phonograms which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable (a) a lawful transmission in a network between third parties by an intermediary; or (b) a lawful use of a performance or phonogram; and which have no independent economic significance.

版权

第17.25条：复制权

1. 每一方应当提供，文学和艺术作品的作者¹⁷⁻⁸ 有权授权或禁止¹⁷⁻⁹ 其作品的所有复制形式，无论以何种方式或形式，永久或临时（包括以物质形式进行的临时存储）¹⁷⁻¹⁰ 。
2. 各缔约方重申， 是否规定作品未经以某种物质形式固定便不享有版权，属于各缔约方法律规定的事项。

相关权利

第17.26条：复制权

1. 每一方应当规定， 表演者就其表演而言， 以及音像制品制作者就其音像制品¹⁷⁻¹¹， 有权授权或禁止以任何方式或形式进行的所有复制，包括永久性或临时性（包括以物质形式进行的临时存储）¹⁷⁻¹² 。
2. 各缔约方重申， 表演和录音是否受相关权利保护， 应根据每一方的法律规定， 除非它们已被以某种物质形式固定下来。

¹⁷⁻⁸ 本章中提及的“作者”也指任何权益继受者。¹⁷⁻⁹ 为了第17.25条第1款和第17.26条第1款的目的， 授权或禁止的权利意味着一项独占权。为了避免歧义， 在智利的情况下， 授权的权利也意味着一项独占权。¹⁷⁻¹⁰ 为临时复制行为提供例外和限制符合本协议， 这些临时复制行为是短暂的或偶然的， 并且是技术过程的一个整体和必要部分， 其唯一目的是（a）由中介在第三方之间通过网络进行合法传输；或（b）合法使用作品；并且不具有独立的经济意义。

¹⁷⁻¹¹ 本章中提及的“表演者”和“音像制品制作者”也指任何权益继受者。¹⁷⁻¹² 为表演或音像制品的临时复制行为提供例外和限制符合本协议， 这些临时复制行为是短暂的或偶然的， 并且是技术过程的一个整体和必要部分， 其唯一目的是（a）由中介在第三方之间通过网络进行合法传输；或（b）合法使用表演或音像制品；并且不具有独立的经济意义。

COMMON PROVISIONS TO COPYRIGHT AND RELATED RIGHTS

Article 17.27: Term of Protection for Copyright and Related Rights

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

Article 17.28: Effective Technological Measures

Each Party shall provide for civil remedies or administrative measures and, when appropriate, criminal penalties, against the circumvention of effective technological measures that are used by authors, performers and producers of phonograms in connection with the exercise of their copyright and related rights, and that restrict acts in respect of their works, performances or phonograms, which are not authorised by those right holders, or permitted by law.

Article 17.29: Rights Management Information

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 with respect to civil remedies, having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any copyright or related right:
 - (i) knowingly removes or alters any rights management information;
 - (ii) distributes or imports for distribution rights management information knowing that the rights management information has been altered without authority; or

版权及相关权利的通用规定

第17.27条：版权及相关权利的保护期

每一方应规定，在计算作品（包括摄影作品）、表演或录音的保护期限时：

- (a) 以自然人的生命为基础，保护期应不少于作者的寿命，并在作者去世后70年；以及(b) 以非自然人生命为基础，保护期应： (i) 不少于作品、表演或音像制品首次授权出版后的日历年结束后的70年；或 (ii) 若在作品、表演或音像制品创作后50年内未进行授权出版，则不少于作品、表演或音像制品创作后的日历年结束后的70年。

第17.28条：有效技术措施

每一方应规定民事救济或行政措施，并在适当情况下规定刑事处罚，以防止规避由作者、表演者和音像制品制作者在使用其版权及相关权利时采取的有效技术措施，这些措施限制了对其作品、表演或音像制品的行为，而这些行为未经这些权利持有人授权，或未经法律许可。

第17.29条：权利管理信息

为了为保护权利管理信息提供充分有效的法律救济：

- (a) 每一方应当规定，任何未经授权，并且就民事救济而言，有合理理由知道其将诱使、使能够、便利或掩盖任何版权及相关权利的侵权行为的个人： (i) 明知移除或修改任何权利管理信息； (ii) 分发或进口以供发行权利管理信息，知道该权利管理信息已被未经授权地修改；或

(iii) distributes to the public, 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, upon the suit of any injured person, and subject to civil remedies.

(b) Further to paragraph (a), each Party shall provide for the application of criminal procedures and penalties at least in cases where acts prohibited in subparagraph (a) are done knowingly, wilfully and for purposes of commercial advantage. A Party may exempt from criminal liability prohibited acts done in connection with a non-profit library, archive, educational institution or broadcasting entity¹⁷⁻¹³ established without a profit-making purpose¹⁷⁻¹⁴.

Article 17.30: Government Use of Software

Each Party shall maintain appropriate laws, orders, regulations, government issued guidelines or administrative or executive decrees which provide that its central government agencies use only legitimate computer software as authorised.

Article 17.31: Exceptions to Copyright and Related Rights

Each Party shall provide for exceptions or limitations to copyright and related rights included in this Chapter, in accordance with the Berne Convention for the Protection of Literary and Artistic Works, the TRIPS Agreement, the WIPO Copyright Treaty and/or the WIPO Performances and Phonograms Treaty.

Article 17.32: Application in Time

Each Party shall apply Article 18 of the Berne Convention, mutatis mutandis, to the subject matter, rights and obligations in Articles 17.25 to 17.31 inclusive.

ENCRYPTED PROGRAM-CARRYING SATELLITE SIGNALS

Article 17.33: Protection

1. Each Party shall make it:

¹⁷⁻¹³ A Party may provide that such a broadcasting entity means a “public non-commercial broadcasting entity”.
¹⁷⁻¹⁴ Each Party may provide for other exceptions to civil and criminal liability in accordance with its domestic law.

(iii) 向公众分发、进口以供发行、广播、传播或向公众提供作品、表演或音像制品的副本，知道权利管理信息已被未经授权地移除或修改；

在受损害的人提起诉讼时，应承担责任，并受民事救济。

(b) 根据第（a）款，每一方应提供对刑事程序和处罚的应用，至少在行为在第（a）项下被禁止的情况下，明知、故意地并为了商业利益的目的而进行时。一方可以免除民事和刑事责任被禁止的行为发生在非营利性图书馆、档案馆、教育机构或广播实体¹⁷⁻¹³ 为非盈利目的设立¹⁷⁻¹⁴。

第17.30条 政府使用软件

每一方应维持适当的法律、命令、法规、政府发布的指南或行政或执行法令，这些规定其中央政府机构只能根据授权使用合法计算机软件。

第17.31条：版权及相关权利的例外

每一方应根据保护文学和艺术作品伯尔尼公约、与贸易有关的知识产权协定、世界知识产权组织版权条约和/或世界知识产权组织表演和录音条约，为包括在本章节中的版权及相关权利提供例外或限制。

第17.32条：时间适用

每一方应相应修改地适用保护文学和艺术作品伯尔尼公约第18条，于第17.25条至第17.31条中的主题、权利和义务。

加密节目传输卫星信号

第17.33条：保护

1. 每一方应当做到：

¹⁷⁻¹³ 一方可以规定此类广播实体是指“公共非商业广播实体”。
¹⁷⁻¹⁴ 每一方可以根据其国内法规定民事和刑事责任的例外情况。

- (a) the basis for a civil action or a criminal offence to manufacture, assemble, modify, import, export, sell, lease or otherwise distribute a tangible or intangible device or system, knowing that the device or system is of assistance in decoding an encrypted program-carrying satellite signal¹⁷⁻¹⁵ without the authorisation of the lawful distributor of such signal; and
- (b) the basis for a civil action or a criminal offence wilfully to receive and make use of, or further distribute, a program-carrying signal that originated as an encrypted program-carrying satellite signal knowing that it has been decoded without the authorisation of the lawful distributor of the signal.

2. Each Party shall provide for the availability of civil proceedings for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted program-carrying signal or its content.

ENFORCEMENT

Article 17.34: General

1. Each Party shall ensure that procedures, remedies and penalties set forth in Articles 17.34 to 17.40 for enforcement of intellectual property rights are established in accordance with its domestic law¹⁷⁻¹⁶. Such administrative and judicial procedures, remedies or penalties, both civil and criminal, shall be made available to the holders of such rights in accordance with the principles of due process that each Party recognises, as well as with the foundations of its own legal system.

2. Articles 17.34 to 17.40 do not create any obligation:
- (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that already existing for the enforcement of law in general; or
 - (b) with respect to the distribution of resources for the enforcement of intellectual property rights and the enforcement of law in general.

The distribution of resources for the enforcement of intellectual property rights shall not excuse a Party from compliance with the provisions of Articles 17.34 to 17.40.

3. Each Party shall provide that final decisions of general application pertaining to the enforcement of intellectual property rights shall be in writing and shall state the

¹⁷⁻¹⁵ The degree to which the device or system assists in decoding an encrypted program-carrying satellite signal shall be a matter of each Party’s law.
¹⁷⁻¹⁶ Nothing in this Chapter prevents a Party from establishing or maintaining appropriate judicial or administrative procedural formalities for this purpose that do not impair each Party’s rights or obligations under this Agreement.

(a) 以制造、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为基础提起民事诉讼或刑事犯罪，明知该设备或系统有助于解码加密节目传输卫星信号¹⁷⁻¹⁵

未经该信号的合法分销商的授权；和

(b) 以故意接收和使用或进一步分发源自加密节目传输卫星信号的节目传输信号作为民事诉讼或刑事犯罪的基础，明知该信号已被未经合法分发者授权解码。

2. 每一方应确保任何因第1段所述活动而受到损害的个人均可提起民事诉讼，包括任何持有加密节目传输信号或其内容的利益相关者。

执行

第17.34条：一般规定

1. 每一方应确保第17.34条至17.40条中关于知识产权执行所规定的程序、救济措施和处罚，是根据其国内法设立的¹⁷⁻¹⁶。
这样的行政和司法程序、救济措施或处罚，无论是民事的还是刑事的，都应根据每一方承认的正当程序原则，以及根据其自身的法律体系的基础，提供给这些权利的持有人。

2. 第17.34条至第17.40条不创设任何义务：

(a) 建立一个与现存的执行一般法律制度不同的司法体系，以执行知识产权；或 (b) 关于执行知识产权和执行一般法律的资源分配。

知识产权权利执行的资源配置不得免除一方遵守第17.34条至17.40条的规定。

3. 每一方应当规定，与知识产权执行相关的具有普遍适用性的最终决定应当以书面形式作出，并应当说明

¹⁷⁻¹⁵ 设备或系统协助解码加密节目传输卫星信号的程度应为一方法律的管辖事项。¹⁷⁻¹⁶ 本章的任何内容均不阻止一方为该目的建立或维持适当司法或行政程序正式程序，只要这些程序不损害每一方在本协议项下的权利或义务。

reasons or the legal basis on which the decisions are based. Each Party shall provide that such decisions shall be published, preferably electronically, or, where such 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.

Article 17.35: Presumptions for Copyright and Related Rights

In civil judicial and criminal proceedings involving copyright or related rights, each Party shall provide:

- (a) for a presumption, in the absence of evidence to the contrary, that the natural person or legal entity whose name is indicated as the author, producer, performer or publisher of the work, performance or phonogram in the usual manner¹⁷⁻¹⁷ shall be presumed to be the designated right holder in such work, performance or phonogram; and
- (b) in accordance with its domestic law, for a presumption, in the absence of evidence to the contrary, that copyright or a related right subsists in such subject matter.

Article 17.36: Civil and Administrative Procedures and Remedies

- 1. Each Party shall make available to right holders¹⁷⁻¹⁸ civil judicial procedures concerning the enforcement of any intellectual property right.
- 2. Each Party shall provide that in civil judicial proceedings, its judicial authorities shall:

- (a) have the authority to order the infringer to pay the right holder:
 - (i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; and
 - (ii) at least in the case of copyright or related rights infringement and trade mark counterfeiting, the profits of the infringer that are attributable to the infringement, and that are not taken into account in determining damages under subparagraph (i)¹⁷⁻¹⁹.

¹⁷⁻¹⁷ Each Party may establish the means by which it shall determine what constitutes the “usual manner” for a particular physical support.
¹⁷⁻¹⁸ For the purpose of this Article, the term **right holder** includes licensees as provided for in each Party’s domestic law, as well as federations and associations having the legal standing and authority to assert such rights.
¹⁷⁻¹⁹ Notwithstanding Article 17.36.2(a), a Party may provide any one or more of the following: that only one or the other of the remedies set out in Article 17.36.2(a)(i) and (ii) is available at the election of the right holder; in the case of a finding of non-use of a trade mark that the right holder may not be entitled to either of the remedies set out in Article 17.36.2(a)(i) and (ii); and in the case of innocent copyright and related rights infringement that the right holder may be entitled to an account of profits but not damages.

理由或决定所依据的法律依据。每一方应提供此类决定应予以公布， 最好以电子方式，或者在公布不切实际的情况下， 以本国语言以使政府和权利持有人能够了解的方式提供给公众。

第17.35条： 版权及相关权利的推定

在涉及版权及相关权利的民事和刑事程序中， 每一方应当提供：

- (a) 在缺乏相反证据的情况下， 对于通常方式下被标明为作品、表演或录音的作者、制作人、表演者或出版者的自然人或法人， 推定其身份¹⁷⁻¹⁷

应当被推定为该作品的指定权利持有人； 以及 (b) 根据其国内法， 在没有相反证据的情况下， 推定该主题存在版权或相关权利。

第17.36条： 民事和行政程序和救济

- 1. 每涉及位何知权利持者的提集司法程序。¹⁸
- 2. 每一方应当规定， 在民事司法程序中， 其司法当局应当：
 - (a) 有权责令侵权者向权利持有人支付： (i) 足以弥补权利持有人所受损害的损害赔偿

因侵权而遭受损失； 以及
 - (ii) 在版权及相关权利侵权的情况下
以及商标假冒， 侵权者因侵权而获得的利润， 这些利润在根据第（i）款确定损害赔偿时不予考虑¹⁷⁻¹⁹。

¹⁷⁻¹⁷ 每一方可以建立其将确定何种构成特定物理载体“通常方式”的方法。¹⁷⁻¹⁸ 就本条而言， 术语“权利持有人”包括各方的国内法中规定的被许可人， 以及具有主张此类权利的法律地位和权力的联邦和协会。¹⁷⁻¹⁹ 尽管有第17.36.2(a)条的规定， 一方可以提供以下一项或多项： 仅有一方或另一方可以选择的救济措施， 即第17.36.2(a)(i)和(ii)中规定的救济措施； 在商标未使用的情况下， 权利持有人无权获得第17.36.2(a)(i)和(ii)中规定的救济措施； 以及在无过错版权及相关权利侵权的情况下， 权利持有人有权获得利润计算但无权获得损害赔偿。

(b) in determining any order for damages made under subparagraph (a), consider, *inter alia*, any legitimate measure of the value of the infringed goods or services including the retail price.

3. Each Party shall provide that, except in exceptional circumstances, its judicial authorities shall have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of copyright or related rights or trade mark counterfeiting, that the prevailing party be awarded payment of courts costs or fees and reasonable attorney’s fees by the infringing party.

4. In civil judicial proceedings concerning copyright or related rights infringement and trade mark counterfeiting, each Party shall provide that its judicial authorities shall have the authority, at least where necessary to prevent further infringement, to order the seizure of suspected infringing goods, related materials and implements by means of which such goods are produced.

5. 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 any information that the infringer possesses regarding persons involved in the infringement and regarding the distribution channels of the infringing goods. Judicial authorities shall also have the authority to impose fines or imprisonment on infringers who do not comply with such orders, in accordance with each Party’s domestic law.

6. If a Party’s judicial or other authorities appoint technical or other experts in civil judicial proceedings concerning the enforcement of intellectual property rights, and require that the parties to the proceedings bear the costs of such experts, the Party should seek to ensure that these costs are reasonable and related appropriately to, *inter alia*, the quantity and nature of work to be performed, or, if applicable, based on standardised fees, and do not unreasonably deter recourse to such proceedings.

Article 17.37: Provisional Measures

1. Each Party’s authorities shall act on requests for relief *inaudita altera parte* expeditiously in accordance with the Party’s judicial rules.

2. With respect to provisional measures, each Party shall provide that its judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder¹⁷⁻²⁰ and that the applicant’s right is being infringed or that such infringement is imminent, and to order the applicant to provide a reasonable security or equivalent assurance set at a level sufficient to protect the respondent and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

¹⁷⁻²⁰ In accordance with subparagraph (a) of Article 17.35.

(b) 在根据第 (a) 项确定损害赔偿时，应考虑，但不限于，任何侵犯商品或服务的合法价值衡量标准，包括零售价格。

3. 每一方应当规定，除特殊情况外，其司法当局在有关版权及相关权利侵权或商标假冒的民事司法程序结束时，应当有权下令，由侵权者向胜诉方支付法院费用或费用以及合理的律师费。

4. 在有关版权及相关权利侵权和商标假冒的民事司法程序中，每一方应当规定，其司法当局应当有权，至少在必要时为防止进一步侵权，下令扣押涉嫌侵权商品、相关材料和用于生产此类商品的工具。

5. 每一方应当规定，在有关知识产权执行的民事司法程序中，其司法当局应当有权下令侵权者提供其持有的有关参与侵权的人员以及涉嫌侵权商品分销渠道的任何信息。司法当局还应当根据每一方的国内法，对不遵守此类命令的侵权者处以罚款或监禁。

6. 如果一方在涉及知识产权执行民事司法诉讼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，该方应努力确保这些费用是合理的，并适当与要执行的工作的数量和性质等相关，或者，如适用，基于标准化费用，并且不合理地阻碍寻求此类诉讼。

第17.37条：临时措施

1. 各方当局在不听取对方意见的情况下，应根据该方的司法规则迅速处理救济请求。

2. 关于临时措施，每一方应规定其司法当局有权要求申请人提供任何合理可用的证据，以便他们足以确信申请人就是权利持有人¹⁷⁻²⁰

并且认定申请人的权利正在受到侵犯或即将受到侵犯，并责令申请人提供合理的担保或同等保证，其水平应足以保护被申请人并防止滥用，并且不应不合理地阻碍寻求此类程序。

¹⁷⁻²⁰ 根据第17.35条（a）项的规定。

Article 17.38: Criminal Procedures and Remedies

Each Party shall provide for criminal procedures and penalties to be applied at least in cases where a person wilfully engages in trade mark counterfeiting or piracy of works, performances or phonograms on a commercial scale¹⁷⁻²¹ including wilful infringement of copyright and related rights for a commercial advantage or financial gain.¹⁷⁻²² Specifically, each Party shall provide:

- (a) penalties that include imprisonment and/or monetary fines that are sufficient to provide a deterrent to infringement consistent with the level of penalties applied for crimes of a corresponding gravity;
- (b) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, related materials and implements that have been used in the commission of the offence, assets legally traceable to the infringing activity and documentary evidence relevant to the offence ¹⁷⁻²³. Each Party shall further provide that its judicial authorities have the authority to order the seizure of items in accordance with its domestic law;
- (c) that its judicial authorities shall have the authority, among other measures, to order the forfeiture of any assets legally traceable to the infringing activity for at least indictable offences, and the forfeiture and destruction of all goods found to be counterfeit or pirated, and, at least with respect to wilful copyright and related rights piracy, to order the forfeiture and destruction of materials and implements that have been used in the making of the infringing goods. Each Party shall further provide that such forfeiture and destruction shall occur without compensation to the defendant; and
- (d) that the appropriate authorities, as determined by each Party, shall have the authority to initiate criminal legal action *ex officio* in cases of copyright and related rights piracy and trade mark counterfeiting without the need for a formal complaint by a person or right holder.

Article 17.39: Border Measures

1. Each Party shall provide, in any right holder initiated procedures for suspension by its Customs Administration of the release into free circulation of suspected counterfeit trade mark goods or pirated copyright goods¹⁷⁻²⁴ imported into

¹⁷⁻²¹ Piracy of works, performances or phonograms on a commercial scale may include where a person wilfully commits significant infringements of copyright that are not committed for the purpose of commercial advantage or financial gain.
¹⁷⁻²² Commercial advantage or financial gain shall be understood to exclude *de minimis* infringements. Nothing in this Agreement prevents prosecutors from exercising any discretion that they may have to decline to pursue cases.
¹⁷⁻²³ Each Party may provide that items that are subject to seizure pursuant to any such judicial order need not be individually identified so long as they fall within general categories specified in the order.
¹⁷⁻²⁴ For the purposes of Article 17.39.1 to 4:

第17.38条：刑事程序和救济

每一方应当规定刑事程序和处罚，至少在个人以商业规模故意从事商标假冒或作品、表演或音像制品的盗版时适用¹⁷⁻²¹，包括为获取商业利益或经济利益而故意侵犯版权及相关权利¹⁷⁻²²。

具体而言，每一方应提供：

- (a) 处罚包括监禁和/或足以提供侵权威慑力的金钱罚款，且与针对相应严重程度的犯罪所适用的处罚水平一致；²³
 - (b) 该缔约方的司法当局应有权下令扣押涉嫌假冒或盗版的商品、与犯罪行为相关的材料及工具、可合法追溯到侵权活动的资产以及与犯罪行为相关的文件证据 ¹⁷⁻。每一方还应当提供其司法当局根据其国内法有权下令扣押物品；
 - (c) 其司法当局应当有权，除其他外
- 措施，以对至少构成可起诉罪行的侵权活动所涉及的任何合法可追溯的资产进行没收，并对发现的假冒或盗版商品进行没收和销毁；并且，至少对于故意侵犯版权及相关权利的盗版行为，应下令没收和销毁用于制造侵权商品的材料和工具。每一方应进一步规定，此类没收和销毁不得向被告提供任何补偿；以及
- (d) 各方确定的适当当局应拥有在版权及相关权利盗版和商标假冒案件中主动发起刑事法律行动的权力，无需个人或权利持有人提出正式投诉。

第十七条第39条：边境措施

1. 每一方应当在其海关当局根据权利持有人启动的、针对涉嫌假冒商标商品或盗版版权商品自由流通的暂停程序中提供¹⁷⁻²⁴ 进口到

¹⁷⁻²¹ 作品、表演或音像制品的商业规模盗版可能包括：个人故意实施重大版权侵权行为，且该行为并非出于商业利益或经济利益的目的。¹⁷⁻²² 商业利益或经济利益应被理解为不包括轻微侵权。本协议中的任何内容均不阻止检察官行使他们可能拥有的拒绝追究案件的自由裁量权。
¹⁷⁻²³ 每一方可以规定，根据任何此类司法命令被扣押的物品无需单独识别，只要它们属于命令中规定的通用类别即可。¹⁷⁻²⁴ 为了第十七条第39.1至4条的目的：

the Party’s territory, that the right holder provide to the satisfaction of the competent authorities:

- (a) adequate evidence that there is *prima facie* infringement of the right holders’ intellectual property rights under the laws of the territory of importation and a sufficiently detailed description of the goods to make them reasonably recognisable by the Party’s Customs Administration; and
- (b) if requested, a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse.

The requirements for a sufficiently detailed description and a security or equivalent assurance shall not unreasonably deter recourse to these procedures.

- 2. Where its competent authorities have made a determination that goods are counterfeit or pirated, a Party shall provide that its competent authorities have the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee, and of the quantity of the goods in question.
- 3. Each Party shall provide that its Customs Administration may initiate border measures *ex officio* with respect to imported or exported goods suspected of being counterfeit trade mark or pirated copyright goods, without the need for a specific formal complaint.
- 4. Each Party shall provide that goods that have been suspended from release by its Customs Administration, and that have been forfeited as pirated or counterfeit, shall be destroyed, except in exceptional cases. In regard to counterfeit trade mark goods, the simple removal of the trade mark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. The competent authorities, except in exceptional circumstances, shall not be authorised to permit the exportation of counterfeit or pirated goods that have been seized, nor shall they be authorised to permit such goods to be subject to movement under customs control.

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- (a) **counterfeit trade mark goods** means any goods including packaging, bearing without authorisation a trade mark that is identical to the trade mark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trade mark, and that thereby infringes the rights of the owner of the trade mark 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 authorised 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 related right under the law of the country of importation.
 - (c)

缔约方领土，权利持有人向主管当局提供，使其满意：

- (a) 有充分证据证明在进口领土的法律下存在初步侵权行为，且对商品有足够详细的描述，以便缔约方海关当局能够合理识别；以及
- (b) 如有要求，提供合理的担保或同等保证，足以保护被告和主管当局，并防止滥用。

对足够详细的描述和安全措施或同等保证的要求，不得不合理地阻碍采取这些程序。

- 2. 当其主管当局已作出认定商品为假冒或盗版的决定时，缔约方应提供其主管当局有权通知权利持有人发货人、进口商和收货人的姓名和地址，以及所涉商品的数量权力。
- 3. 每一方应提供其海关当局可以在没有具体正式投诉的情况下，对怀疑为假冒商标或盗版版权商品进口或出口的商品主动采取边境措施的权力。
- 4. 每一方应当规定，其海关当局已暂停放行的、被认定为盗版或假冒的商品应当销毁，除非是特殊情况。关于假冒商标商品，仅移除非法附加的商标并不足以允许该商品进入商业渠道。除特殊情况外，主管当局不得被授权允许放行已被扣押的假冒或盗版商品，也不得被授权允许此类商品在海关监管下移动。

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- (a) 假冒商标商品是指任何包括包装在内的商品，该商品未经授权带有与该商品有效注册的商标相同或在其主要方面无法与该商标区分的商标，并因此侵犯该商标所有人在进口国法律下的权利；以及 (b) 盗版版权商品是指未经版权持有人或版权持有人在产品生产国正式授权的个人同意而制作的复制品，这些复制品直接或间接地来自一个物品，如果制作该复制品将构成对进口国法律下的版权或相关权利的侵权。(c)

Article 17.40: Service Provider Liability

1. Each Party shall provide for a legislative scheme to limit remedies that may be available against service providers¹⁷⁻²⁵ for infringement of copyright or related rights¹⁷⁻²⁶ that they do not control, initiate or direct and that take place through their systems or networks.
2. The scheme in paragraph 1 will only apply if a service provider meets conditions, including:
- (a) removing or disabling access to infringing material upon notification from the rights owner through a procedure established by each Party; and
 - (b) no financial benefit is received by the service provider for the infringing activity in circumstances where it has the right and ability to control such activity.

COOPERATION

Article 17.41: Cooperation

Consistent with Article 17.2 the Parties agree to cooperate through:

- (a) the notification of relevant contact points on the request of a Party; and
- (b) the exchange of publicly available information concerning policy developments in intellectual property of a Party on the request of the other Party and to the extent that the requested Party is able to provide such information.

¹⁷⁻²⁵ Each Party may determine, within its domestic law, what constitutes a service provider.
¹⁷⁻²⁶ Each Party may determine, within its domestic law, what constitutes a related right for the purpose of this Article.

第17.40条：服务提供者责任

1. 每一方应当提供一项立法方案，以限制对服务提供者¹⁷⁻²⁵ 因他们不控制、发起或指使的、通过其系统或网络发生的版权或相关权利¹⁷⁻²⁶侵权行为可获得的救济措施。
2. 第1段的规定只有在服务提供者满足条件时才会适用，包括：
- (a) 在每一方建立的程序下，根据权利人的通知移除或禁用对侵权材料的访问；以及 (b) 在服务提供者有权且有能力控制此类活动的情况下，其未从侵权活动中获得任何经济利益。

合作

第17.41条：合作

根据第17.2条，双方同意通过以下方式合作：

- (a) 一方要求时，通知相关联系点；以及 (b) 在另一方要求且被要求方能够提供提供的情况下，交流有关一方知识产权政策发展的公开信息。

第17章 知识产权第17.41条 合作每一方可在其国内法中确定构成服务提供者的内容。每一方可在其国内法中确定构成本条相关权利的内容。