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Betreft: standpuntbepaling CETA

Geachte heer Verhagen,

Amsterdam
1 augustus 2012

Op 4 juli 2012 besloot het Europees Parlement tot verwerping van het Anti-Counterfeiting Trade Agreement (ACTA). Tot onze grote schrik werd ACTA nog geen zes dagen later opnieuw onderwerp van discussie. Uit een gelekte versie van het Canada - EU Trade Agreement (CETA) blijkt namelijk dat dit verdrag een aantal bepalingen bevat die nagenoeg identiek zijn aan bepalingen uit ACTA.

Uit een vergelijkingsoverzicht tussen ACTA en CETA (zie **bijlage**) volgt dat de gelijkenis ziet op – onder meer – artikel 23(1), 27(3) en (4) en 9(1) van ACTA. Deze omstreden bepalingen gaan over respectievelijk strafrechtelijke handhaving, private handhaving door Internet Service Providers en schadevergoeding. Juist deze bepalingen zijn omstreden en waren reden om ACTA te verwerpen.

Tot onze blijdschap was het groeiende verzet tegen ACTA ook voor uw regering reden om ACTA af te wijzen: bij brief van 25 juni 2012 liet u weten ACTA definitief niet te ondertekenen. Nederland nam hiermee het voortouw in de strijd tegen ACTA op Europees niveau.

Wat betreft CETA is voor Nederland is een zelfde rol weggelegd. Gezien uw regeringsstandpunt over ACTA, gaan wij er vanuit dat wanneer CETA in de Raad van Ministers wordt besproken, uw regeringsstandpunt over de ACTA-bepalingen in CETA hetzelfde zal zijn. Immers, het gaat om inhoudelijk dezelfde bepalingen.

Overigens waren we enigszins verbaasd door uw brief van 10 juli 2012, waarin u reageert op een oproep om tegen nieuwe met ACTA vergelijkbare verdragen te stemmen. U overweegt daarin “dat elk ontwerp-verdrag op zijn

eigen inhoud zal worden beoordeeld". Zoals we hier voor hebben opgemerkt zijn een aantal bepalingen in ACTA en CETA identiek. Dat geldt dus ook voor hun beoordeling. Een eigen inhoudelijke beoordeling van deze bepalingen in CETA zal dan ook niet leiden tot een ander oordeel. We gaan er daarom vanuit dat uw overweging niet op deze bepalingen ziet.

Daarvoor maakt het geen verschil dat de Europese Commissie op 11 juli liet weten dat artikelen 27(3) en (4) van ACTA inmiddels uit CETA zijn verwijderd. De gelijkenis met ACTA strekt immers verder dan dit ene artikel.

Wij verzoeken u daarom met klem te bevestigen dat de Nederlandse regering in de Raad van Ministers tegen CETA zal stemmen, althans tegen die bepalingen die inhoudelijk gelijk zijn aan enige bepaling van ACTA. Wij verzoeken uw regering verder te bevestigen dat zij ernaar streven dat deze bepalingen uit CETA worden verwijderd. Uw bevestiging ontvangen wij graag ruim voor de eerstvolgende vergadering van de Raad van Ministers en in ieder geval binnen veertien dagen na dagtekening van deze brief.

Deze brief zond ik u tevens per e-mail.

Hoogachtend,

Simone Halink

Cc: staatssecretaris Teeven



Bijlage - Overzicht van ACTA-bepalingen in CETA, opgesteld door ACTA-expert Michael Geist.

Print

ACTA Lives: How the EU & Canada Are Using CETA as Backdoor Mechanism To Revive ACTA

Monday July 09, 2012

Last week, the European Parliament voted overwhelmingly to reject ACTA, striking a major blow to the hopes of supporters who envisioned a landmark agreement that would set a new standard for intellectual property rights enforcement. The European Commission, which negotiates trade deals such as ACTA on behalf of the European Union, has vowed to revive the badly damaged agreement. Its most **high-profile move** has been to ask the European Court of Justice to rule on ACTA's compatibility with fundamental European freedoms with the hope that a favourable ruling could allow the European Parliament to reconsider the issue.

While the court referral has attracted the lion share of attention, my weekly technology law column ([Toronto Star version](#), [homepage version](#)) reports that there is an alternate secret strategy in which Canada plays a key role. According to **recently leaked documents**, the EU plans to use the Canada - EU Trade Agreement (CETA), which is nearing its final stages of negotiation, as a backdoor mechanism to implement the ACTA provisions. [UPDATE 7/10: **new post** on why the concern over ACTA in CETA is warranted] [UPDATE 7/11: EC responds by **saying** ACTA ISP provisions removed from CETA. Appears likely most of remaining provisions remain]

The **CETA IP chapter** has already attracted attention due to EU pharmaceutical patent demands that could add billions to provincial health care costs, but the bigger story may be that the same chapter features a near word-for-word replica of ACTA. According to the leaked document, dated February 2012, Canada and the EU have already agreed to incorporate many of the ACTA enforcement provisions into CETA, including the rules on general obligations on enforcement, preserving evidence, damages, injunctions, and border measure rules. One of these provisions even specifically references ACTA. A comparison table of ACTA and the leaked CETA chapter is posted below. has already attracted attention due to EU pharmaceutical patent demands that could add billions to provincial health care costs, but the bigger story may be that the same chapter features a near word-for-word replica of ACTA. According to the leaked document, dated February 2012, Canada and the EU have already agreed to incorporate many of the ACTA enforcement provisions into CETA, including the rules on general obligations on enforcement, preserving evidence, damages, injunctions, and border measure rules. One of these provisions even specifically references ACTA. A comparison table of ACTA and the leaked CETA chapter is posted below.

The EU has also proposed incorporating ACTA's criminal enforcement and co-operation chapters into CETA. The criminal provisions were the target of European Parliament criticism for their lack of proportionality and uncertain application.

Canada has similarly pushed for the inclusion of ACTA provisions, proposing identical digital lock rules as well as ACTA-style Internet service provider provisions that raised privacy concerns from the European Data Protection Supervisor. In fact, Canada would like to extend ACTA by mandating an anti-camcording provision (a similar provision is currently voluntary in ACTA).

The European Commission strategy appears to be to use CETA as the new ACTA, burying its provisions in a broader Canadian trade agreement with the hope that the European Parliament accepts the same provisions it just rejected with the ACTA framework. If successful, it would likely then argue that ACTA poses no new concerns since the same rules were approved within the Canadian trade deal.

The backdoor ACTA approach creates enormous risks for Canada's trade ambitions. Given the huge anti-ACTA movement, the Canada - EU trade deal could face widespread European opposition with CETA becoming swept up in similar protests.

With anti-ACTA sentiment spreading across Europe, Canada should push to remove the intellectual property chapter from CETA altogether. The move would not be unprecedented. Many of Canada's free trade agreements feature only limited IP provisions and last year a Canadian parliamentary committee **recommended** that "domestic copyright policies are not part of any present or future trade negotiations."

Meanwhile, the U.S. and EU recently **announced** their own plans to negotiate a trade deal but agreed to keep intellectual property issues out of the talks. If CETA becomes known as ACTA II, the future of the Canada - EU trade deal may hinge on adopting a similar approach.

Issue	ACTA (Final version)	CETA IP Draft (as of February 2012)
Scope	Each Party shall be free to determine the appropriate method of implementing the provisions of this Agreement within its own legal system and practice. (Article 2(1))	Each Party shall be free to determine the appropriate method of implementing the provisions of this Agreement within its own legal system and practice.
	Nothing in this Agreement creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and enforcement of law in general. (Article 2(2))	Nothing in this Agreement creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and enforcement of law in general.
Technological Protection Measures	Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers or producers of phonograms in connection with the exercise of their rights in, and that restrict acts in respect of, their works, performances, and phonograms, which are not authorized by the authors, the performers or the producers of phonograms concerned or permitted by law. (Article 27(5))	Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures ⁴¹ that are used by authors, performers [CA: of performances fixed in phonograms,] or producers of phonograms in connection with the exercise of their rights in, and that restrict acts in respect of, their works, performances [CA: fixed in phonograms], and phonograms, which are not authorized by the authors, the performers [CA: of performances fixed in phonograms,] or the producers of phonograms concerned or permitted by law. [as proposed by Canada]
	In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 5, each Party shall provide protection at least against: (a) to the extent provided by its law: (i) the unauthorized circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know; and (ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and (b) the manufacture, importation, or distribution of a device or product, including computer programs, or provision of a service that: (i) is primarily designed or produced for the purpose of circumventing an effective technological measure; or (ii) has only a limited commercially significant purpose other than circumventing an effective technological measure. (Article 27(6))	In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 5.13(1), each Party shall provide protection at least against: (a) to the extent provided by its law: (i) the unauthorized circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know; and (ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and (b) the manufacture, importation, or distribution of a device or product, including computer programs, or provision of a service that: (i) is primarily designed or produced for the purpose of circumventing an effective technological measure; or (ii) has only a limited commercially significant purpose other than circumventing an effective technological measure. [as proposed by Canada]
	In implementing paragraphs 5 and 6, no 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 contravene its measures implementing these paragraphs. (Article 27(6) footnote 15)	In implementing paragraphs 5.13(1) and (2), no 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 contravene its measures implementing these paragraphs. [as proposed by Canada]
	In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraphs 5 and 7, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraphs 5, 6, and 7. The obligations set forth in paragraphs 5, 6, and 7 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law. (Article 27(8))	In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraph 5.13(1), a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraphs 5.13(1) and (2). The obligations set forth in paragraphs 5.13(1) and (2) are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law. [as proposed by Canada]
Internet Provider Liability	Further to paragraph 1, each Party's enforcement procedures shall apply to infringement of copyright or related rights over digital networks, which may include the unlawful use of means of widespread distribution for infringing purposes. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy. [Footnote 13: For instance, without prejudice to a Party's law, adopting or maintaining a regime providing for limitations on the liability of, or on the remedies available against, online service providers while preserving the legitimate interests of right holder.] 3. Each Party shall endeavour to promote cooperative efforts within the business community to effectively address trademark and copyright or related rights infringement while preserving legitimate competition and, consistent with that Party's law, preserving fundamental principles such as freedom of	Each Party's enforcement procedures shall apply to infringement of copyright or related rights over digital networks, which may include the unlawful use of means of widespread distribution for infringing purposes. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy. [CA: For instance, without prejudice to a Party's law, adopting or maintaining a regime providing for limitations on the liability of, or on the remedies available against, online service providers, while preserving the legitimate interests of right holders, would be permitted]. 5.16(2) Each Party shall endeavour to promote cooperative efforts within the business community to effectively address trademark and copyright or related rights infringement while preserving legitimate competition and, consistent with that Party's law, preserving fundamental principles such as

	<p>expression, fair process, and privacy.</p> <p>4. A Party may provide, in accordance with its laws and regulations, its competent authorities with the authority to order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, where that right holder has filed a legally sufficient claim of trademark or copyright or related rights infringement, and where such information is being sought for the purpose of protecting or enforcing those rights. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy. (Article 27)</p>	<p>freedom of expression, fair process, and privacy.</p> <p>5.16(3) A Party may provide, in accordance with its laws and regulations, its competent authorities with the authority to order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, where that right holder has filed a legally sufficient claim of trademark or copyright or related rights infringement, and where such information is being sought for the purpose of protecting or enforcing those rights. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy.] [proposed by Canada]</p>
Civil Enforcement: Injunctions	<p>Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to issue an order against a party to desist from an infringement, and inter alia, an order to that party or, where appropriate, to a third party over whom the relevant judicial authority exercises jurisdiction, to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce.</p> <p>Notwithstanding the other provisions of this Section, a Party may limit the remedies available against use by governments, or by third parties authorized by a government, without the authorization of the right holder, to the payment of remuneration, provided that the Party complies with the provisions of Part II of the TRIPS Agreement specifically addressing such use. In other cases, the remedies under this Section shall apply or, where these remedies are inconsistent with a Party's law, declaratory judgments and adequate compensation shall be available. (Article 8)</p>	<p>1. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to issue an order against a party to desist from an infringement, and inter alia, an order to that party or, where appropriate, to a third party over whom the relevant judicial authority exercises jurisdiction, to prevent infringing goods from entering into the channels of commerce.</p> <p>2. Notwithstanding the other provisions of this Section, a Party may limit the remedies available against use by government, or by third parties authorized by government, without the use of authorization of the right holders to the payment of remuneration provided that the Party complies with the provisions of Part II of the TRIPS Agreement specifically addressing such use. In other cases, the remedies under this Section shall apply or, where these remedies are inconsistent with a Party's law, declaratory judgments and adequate compensation shall be available.</p>
Civil Enforcement: Damages	<p>Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to order the infringer who, knowingly or with reasonable grounds to know, engaged in infringing activity to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement. In determining the amount of damages for infringement of intellectual property rights, a Party's judicial authorities shall have the authority to consider, inter alia, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price. (Article 9(1))</p>	<p>1. Each Party shall provide that:</p> <p>(a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer who knowingly or with reasonable grounds to know, engaged in infringing activity of intellectual property rights to pay the right holder:</p> <p>(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; or</p> <p>(ii) the profits of the infringer that are attributable to the infringement, which may be presumed to be the amount of damages referred to in paragraph (i);</p> <p>(b) in determining the amount of damages for infringements of intellectual property rights, its judicial authorities may consider, inter alia, any legitimate measure of value that may be submitted by the right holder, including lost profits.</p> <p>[CA: 2. For greater certainty, a Party may limit or exclude damages in certain special cases.] [EU: 2. These provisions are without prejudice to a Party's legislation providing for limitations of damages in certain exceptional situations, provided that they preserve the legitimate interests of the right holders.]</p>
Civil Enforcement: Other Remedies	<p>1. At least with respect to pirated copyright goods and counterfeit trademark goods, each Party shall provide that, in civil judicial proceedings, at the right holder's request, its judicial authorities have the authority to order that such infringing goods be destroyed, except in exceptional circumstances, without compensation of any sort.</p> <p>2. Each Party shall further provide that its judicial authorities have the authority to order that materials and implements, the predominant use of which has been in the manufacture or creation of such infringing goods, be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.</p> <p>3. A Party may provide for the remedies described in this Article to be carried out at the infringer's expense. (Article 10)</p>	<p>1. The Parties shall ensure that the judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the definitive removal from the channels of commerce, or the destruction, of goods that they have found to be infringing an intellectual property right. The Parties shall ensure that the judicial authorities may order, if appropriate, destruction of materials and implements predominantly used in the creation or manufacture of those goods. In considering a request for such remedies, the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of third parties, shall be taken into account.</p> <p>2. The Parties shall ensure that the judicial authorities have the authority to order that those remedies shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.</p>
Civil Enforcement: Information	<p>Without prejudice to its law governing privilege, the protection of confidentiality of information sources, or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority, upon a justified request of the right holder, to order the infringer or, in the alternative, the alleged infringer, to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. Such information may include information regarding any person involved in any aspect of the infringement or alleged infringement and regarding the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of such goods or services and of their channels of distribution. (Article 11)</p>	<p>Without prejudice to its law governing privilege, the protection of confidentiality of information sources or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority, upon a justified request of the right holder, to order the infringer or the alleged infringer, to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. Such information may include information regarding any person involved in any aspect of the infringement or alleged infringement and regarding the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of such goods or services and of their channels of distribution.</p>
Civil Enforcement: Provisional Measures	<p>1. Each Party shall provide that its judicial authorities have the authority to order prompt and effective provisional measures:</p> <p>(a) against a party or, where appropriate, a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of any intellectual property right from occurring, and in particular, to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce;</p> <p>(b) to preserve relevant evidence in regard to the alleged infringement.</p> <p>2. Each Party shall provide that its judicial authorities have the authority to adopt provisional measures inaudita altera parte where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed. In proceedings conducted inaudita altera parte, each Party shall provide its judicial authorities with the authority to act expeditiously on requests for provisional measures and to make a decision without undue delay.</p> <p>3. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the seizure or other taking into custody of suspect goods, and of materials and implements relevant to the act of infringement, and, at least for trademark counterfeiting, documentary evidence, either originals or copies thereof, relevant to the infringement. (Article 12)</p>	<p>1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional and precautionary measures, including an interlocutory injunction, against a party, or where appropriate, against a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of an intellectual property right from occurring, and in particular, to prevent infringing goods from entering the channels of commerce.</p> <p>2. Each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.</p> <p>3. Each Party shall provide that, in the case of an alleged infringement of an intellectual property right committed on a commercial scale, the judicial authorities may order, in accordance with domestic law, the precautionary seizure of property of the alleged infringer, including the blocking of its bank accounts and other assets. To that end, the judicial authorities may order the communication of relevant bank, financial or commercial documents, or access to other relevant information, as appropriate.</p>
Civil Enforcement: Legal Costs	<p>Each Party shall provide that its authorities have the authority to require the applicant, with respect to provisional measures, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to procedures for such provisional measures. (Article 12)</p>	<p>Each Party shall provide that its judicial authorities, where appropriate, shall have the authority to order, at the conclusion of civil judicial proceedings concerning the enforcement of intellectual property rights, that the prevailing party be awarded payment by the losing party of legal costs and other expenses, as provided for under that Party's law.</p>
Criminal	<p>1. Each Party shall provide for criminal procedures and penalties to be</p>	<p>Each Party shall provide for criminal procedures and penalties to be applied</p>

<p>Enforcement: Offences</p>	<p>applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale. For the purposes of this Section, acts carried out on a commercial scale include at least those carried out as commercial activities for direct or indirect economic or commercial advantage. 2. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation and domestic use, in the course of trade and on a commercial scale, of labels or packaging: (a) to which a mark has been applied without authorization which is identical to, or cannot be distinguished from, a trademark registered in its territory; and (b) which are intended to be used in the course of trade on goods or in relation to services which are identical to goods or services for which such trademark is registered. 4. With respect to the offences specified in this Article for which a Party provides criminal procedures and penalties, that Party shall ensure that criminal liability for aiding and abetting is available under its law. 5. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability, which may be criminal, of legal persons for the offences specified in this Article for which the Party provides criminal procedures and penalties. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences. (Article 23)</p>	<p>at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale. [footnote: Each Party shall treat wilful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties under this Article. A Party may comply with its obligation relating to importation and exportation of counterfeit trademark goods or pirated copyright goods by providing for distribution, sale or offer for sale of such goods on a commercial scale as unlawful activities subject to criminal penalties.] Such wilful trademark counterfeiting includes cases where distributors or retailers selling counterfeit products openly indicate that they are counterfeit. For the purposes of this Article, acts carried out on a commercial scale include at least those carried out as commercial activities for direct or indirect economic or commercial advantage. 2. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation and domestic use, in the course of trade and on a commercial scale, of labels or packaging: (a) to which a mark has been applied without authorization which is identical to or cannot be distinguished from a trademark registered in its territory; and (b) which are intended to be used in the course of trade on goods or in relation to services which are identical to goods or services for which such trademark is registered. 3. With respect to the offences specified in this Article for which a Party provides criminal procedures and penalties, that Party shall ensure that criminal liability for aiding and abetting is available under its law. 4. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability, which may be criminal, of legal persons for the offences specified in this Article for which the Party provides criminal procedures and penalties. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.</p>
<p>Criminal Enforcement: Camcording</p>	<p>3. A Party may provide criminal procedures and penalties in appropriate cases for the unauthorized copying of cinematographic works from a performance in a motion picture exhibition facility generally open to the public. (Article 23)</p>	<p>[CA: Article 24.1.X – Camcording Each Party shall provide for criminal procedures and penalties to be applied in accordance with its laws and regulations against any person who, without authorization of the theatre manager or the holder of copyright in a cinematographic work, makes a copy of that work or any part thereof, from a performance of the work in a motion picture exhibition facility. In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraph 5.13(1), a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraphs 5.13(1) and (2). The obligations set forth in paragraphs 5.13(1) and (2) are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law.]</p>
<p>Criminal Enforcement: Penalties</p>	<p>For offences specified in paragraphs 1, 2, and 4 of Article 23 (Criminal Offences), each Party shall provide penalties that include imprisonment as well as monetary fines¹² sufficiently high to provide a deterrent to future acts of infringement, consistently with the level of penalties applied for crimes of a corresponding gravity. (Article 24)</p>	<p>For offences specified in paragraphs 1, 2 [CA: insertion of camcording paragraph number from above TBD] and 3 of Article 24.1 (Criminal Offences), each Party shall provide penalties that include imprisonment as well as monetary fines⁴⁸ sufficiently high to provide a deterrent to future acts of infringement, consistently with the level of penalties applied for crimes of a corresponding gravity.</p>
<p>Criminal Enforcement: Seizure, Forfeiture and Destruction</p>	<p>1. With respect to the offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence, and the assets derived from, or obtained directly or indirectly through, the alleged infringing activity. 2. Where a Party requires the identification of items subject to seizure as a prerequisite for issuing an order referred to in paragraph 1, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure. 3. With respect to the offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of all counterfeit trademark goods or pirated copyright goods. In cases where counterfeit trademark goods and pirated copyright goods are not destroyed, the competent authorities shall ensure that, except in exceptional circumstances, such goods shall be disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall ensure that the forfeiture or destruction of such goods shall occur without compensation of any sort to the infringer. 4. With respect to the offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of materials and implements predominantly used in the creation of counterfeit trademark goods or pirated copyright goods and, at least for serious offences, of the assets derived from, or obtained directly or indirectly through, the infringing activity. Each Party shall ensure that the forfeiture or destruction of such materials, implements, or assets shall occur without compensation of any sort to the infringer. 5. With respect to the offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party may provide that its judicial authorities have the authority to order: (a) the seizure of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through, the allegedly infringing activity; and (b) the forfeiture of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through, the infringing activity. (Article 25)</p>	<p>1. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence, and the assets derived from, or obtained directly or indirectly through the alleged infringing activity. 2. Where a Party requires the identification of items subject to seizure as a prerequisite for issuing an order referred to in paragraph 1, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure. 3. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of all counterfeit trademark goods or pirated copyright goods. In cases where counterfeit trademark goods and pirated copyright goods are not destroyed, the competent authorities shall ensure that, except in exceptional circumstances, such goods shall be disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall ensure that the forfeiture or destruction of such goods shall occur without compensation of any sort to the infringer. 4. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of materials and implements predominantly used in the creation of counterfeit trademark goods or pirated copyright goods and, at least for serious offences, of the assets derived from, or obtained directly or indirectly, through the infringing activity. Each Party shall ensure that the forfeiture or destruction of such materials, implements, or assets shall occur without compensation of any sort to the infringer. 5. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party may provide that its judicial authorities have the authority to order: a) the seizure of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through the allegedly infringing activity; and b) the forfeiture of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through the infringing activity.</p>
<p>Criminal Enforcement: Ex Officio Enforcement</p>	<p>Each Party shall provide that, in appropriate cases, its competent authorities may act upon their own initiative to initiate investigation or legal action with respect to the criminal offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which that Party provides criminal procedures and penalties. (Article 26)</p>	<p>Each Party shall provide that, in appropriate cases, its competent authorities may act upon their own initiative to initiate investigation or legal action with respect to the criminal offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties.]</p>
<p>Border Measures: Provision of Information</p>	<p>Each Party shall permit its competent authorities to request a right holder to supply relevant information to assist the competent authorities in taking the border measures referred to in this Section. A Party may also allow a right holder to supply relevant information to its competent authorities. (Article 15)</p>	<p>[EU: Article 25.1 – Provision of Information from the Right Holder Each Party shall permit its competent authorities to request a right holder to supply information that may reasonably be expected to be within the right holder's knowledge to assist the competent authorities in taking the border measures referred to in this Article. Each Party also allow a right holder to supply such information to its competent authorities.] [Canada opposed]</p>
<p>Border Measures: Scope</p>	<p>1. Each Party shall adopt or maintain procedures with respect to import and export shipments under which: (a) its customs authorities may act upon their own initiative to suspend the release of suspect goods; and</p>	<p>1. Each Party shall adopt or maintain procedures with respect to import [EU: and export] shipments under which a right holder may request its competent authorities to suspend the release of, or detain goods suspected of infringing an IPB [CA: For the purposes of this Article, goods infringing an intellectual</p>

	<p>release of suspect goods, and (b) where appropriate, a right holder may request its competent authorities to suspend the release of suspect goods. 2. A Party may adopt or maintain procedures with respect to suspect in-transit goods or in other situations where the goods are under customs control under which: (a) its customs authorities may act upon their own initiative to suspend the release of, or to detain, suspect goods; and (b) where appropriate, a right holder may request its competent authorities to suspend the release of, or to detain, suspect goods. (Article 16) 1. Each Party shall include in the application of this Section goods of a commercial nature sent in small consignments. 2. A Party may exclude from the application of this Section small quantities of goods of a non-commercial nature contained in travellers' personal luggage. (Article 14)</p>	<p>an IPR [CA: For the purposes of this Article, goods infringing an intellectual property right shall at least include goods that are subject to footnote 14 of Article 51 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.] [EU: notably in respect of: (a) trademark; (b) copyright; (c) geographical indication; and (d) design.] [EU: 2. Each party may enable such procedures to be made in respect of goods which involve infringements of other intellectual property rights.] 3. Each Party shall adopt or maintain procedures with respect to import [EU: and export] shipments under which its competent authorities may act upon their own initiative to suspend the release of, or to detain goods suspected of infringing an IPR [EU: notably in respect of those listed in paragraph 1.] [EU: 4. For the purposes of this provision: (a) "Import shipments" means shipments of goods brought into the territory of the parties from a place outside that territory, excluding goods that have been cleared for home consumption; (b) "Export shipments" means shipments of goods which are to be taken from the territory of the parties to a place outside that territory.] [CA: 4. Each Party may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.]</p>
<p>Border Measures: Application by the Right Holder</p>	<p>1. Each Party shall provide that its competent authorities require a right holder that requests the procedures described in subparagraphs 1(b) and 2(b) of Article 16 (Border Measures) to provide adequate evidence to satisfy the competent authorities that, under the law of the Party providing the procedures, 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 suspect goods reasonably recognizable by the competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to the procedures described in subparagraphs 1(b) and 2(b) of Article 16 (Border Measures). 2. Each Party shall provide for applications to suspend the release of, or to detain, any suspect goods under customs control in its territory. A Party may provide for such applications to apply to multiple shipments. A Party may provide that, at the request of the right holder, the application to suspend the release of, or to detain, suspect goods may apply to selected points of entry and exit under customs control. 3. Each Party shall ensure that its competent authorities inform the applicant within a reasonable period whether they have accepted the application. Where its competent authorities have accepted the application, they shall also inform the applicant of the period of validity of the application. 4. A Party may provide that, where the applicant has abused the procedures described in subparagraphs 1(b) and 2(b) of Article 16 (Border Measures), or where there is due cause, its competent authorities have the authority to deny, suspend, or void an application. (Article 17)</p>	<p>1. Each Party shall provide that its competent authorities require a right holder that requests the procedures described in Article 25.2 to provide adequate evidence to satisfy the competent authorities that, under the law of the Party providing the procedures, 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 suspect goods reasonably recognizable by the competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to the procedures described in Article 25.2. 2. Each Party shall provide for applications to suspend the release of, or to detain goods suspected of infringing an IPR listed Article 25.2, [EU: under customs control in its territory][CA: to suggest alternate wording]. The competent authorities may provide for such applications to apply to multiple shipments. Each Party may provide that, at the request of the right holder, the application to suspend the release of, or to detain suspect goods may apply to selected points of entry and exit under customs control. 3. Each Party shall ensure that its competent authorities inform the applicant within a reasonable period whether they have accepted the application. Where its competent authorities have accepted the application, they shall also inform the applicant of the period of validity of the application. 4. A Party may provide that, where the applicant has abused the procedures described in Article 25.2, or where there is due cause, its competent authorities have the authority to deny, suspend, or void an application.</p>
<p>Border Measures: Security</p>	<p>Each Party shall provide that its competent authorities have the authority to require a right holder that requests the procedures described in subparagraphs 1(b) and 2(b) of Article 16 (Border Measures) to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures. A Party may provide that such security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of, or detention of, the goods in the event the competent authorities determine that the goods are not infringing. A Party may, only in exceptional circumstances or pursuant to a judicial order, permit the defendant to obtain possession of suspect goods by posting a bond or other security. (Article 18)</p>	<p>Each Party shall provide that its competent authorities have the authority to require a right holder that requests the procedures described in Article 25.2 to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures. [CA: A Party may provide that such security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of, or detention of, the goods in the event the competent authorities determine that the goods are not infringing. A Party may, only in exceptional circumstances or pursuant to a judicial order, permit the defendant to obtain possession of suspect goods by posting a bond or other security.]</p>
<p>Border Measures: Determination as to Infringement</p>	<p>Each Party shall adopt or maintain procedures by which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in Article 16 (Border Measures), whether the suspect goods infringe an intellectual property right. (Article 19) 1. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination referred to in Article 19 (Determination as to Infringement) that the goods are infringing. In cases where such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. 2. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce. 3. A Party may provide that its competent authorities have the authority to impose administrative penalties following a determination referred to in Article 19 (Determination as to Infringement) that the goods are infringing. (Article 20)</p>	<p>Each Party shall adopt or maintain procedures by which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in Article 25.2, whether the suspect goods infringe an intellectual property right. Article 25.6 – Remedies 1. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination referred to in Article 25.5 that the goods are infringing. In cases where such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. 2. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce. 3. Each Party may provide that its competent authorities have the authority to impose administrative penalties following a determination referred to in Article 25.5 that the goods are infringing.</p>

br / s intellectual property right, and to supply sufficient information that may reasonably be expected to be within the right holderlink rel=

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