

SUB-SECTION 1 - CIVIL AND ADMINISTRATIVE ENFORCEMENT

ARTICLE 17.55 - Measures to preserve evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, its judicial authorities have the authority to order, on application by a party who has presented reasonably available evidence sufficient to support their claims that their intellectual property right has been infringed or is about to be infringed, prompt and effective provisional measures to preserve relevant evidence in regard to the alleged infringement, subject to appropriate safeguards and the protection of confidential information.
2. The measures to preserve evidence referred to in paragraph 1 may include, in appropriate cases, the detailed description, or the physical seizure, or other taking into custody in accordance with the law of the Party, of the alleged infringing goods, the materials and implements used in the production or distribution of these goods and the documentary evidence, relevant to the alleged infringement.
3. In the case of an alleged infringement of an intellectual property right committed on a commercial scale or in other cases subject to the law of a Party, each Party shall ensure that its judicial authorities have the authority to order, where appropriate, the communication of banking, financial or commercial documents under the control of the alleged infringer, subject to the protection of confidential information.
4. Each Party shall ensure that its judicial authorities have the authority to adopt provisional measures to preserve relevant evidence in respect of the alleged infringement of an intellectual property right without the defendant having been heard, where appropriate, in particular if any delay is likely to cause irreparable harm to the right holder, or if there is a demonstrable risk of evidence being destroyed.
5. Each Party shall ensure that its judicial authorities have the authority to require the applicant, with respect to measures to preserve evidence, to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.
6. Each Party shall ensure that its judicial authorities have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by the measures to preserve evidence, if those measures are revoked or if they lapse due to any act or omission by the applicant, or if it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right.

ARTICLE 17.56 - Right of information

1. Without prejudice to its law governing privilege, the protection of confidentiality of information sources or the processing of personal data, each Party shall ensure that, in civil judicial proceedings concerning the enforcement of an intellectual property right, its judicial authorities 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 the law of that Party, that the infringer or alleged infringer possesses or controls.

2. The information referred to in paragraph 1 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 those goods or services and of their channels of distribution.

ARTICLE 17.57 - Provisional and precautionary measures

1. Each Party shall ensure that its judicial authorities have the authority to order, at the request of the applicant, prompt and effective provisional measures:

- (a) against the alleged infringer or, where appropriate and subject to each Party's law, a third party,¹ over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right, to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis, the continuation of the alleged infringement of that right;
- (b) including, if appropriate, the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.

2. In the case of an alleged infringement committed on a commercial scale or in other cases subject to a Party's law, a Party shall ensure that if the applicant demonstrates circumstances likely to endanger the recovery of damages, its judicial authorities have the authority to order, subject to the law of that Party, the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of the alleged infringer's bank accounts and other assets. To that end, a Party shall ensure that its judicial authorities have the authority to order, where appropriate, the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

3. Each Party shall ensure that its judicial authorities have the authority to adopt provisional measures referred to in paragraphs 1 and 2 without the defendant having been heard, where appropriate, in particular if any delay is likely to cause irreparable harm to the right holder, or if there is a demonstrable risk of evidence being destroyed.

4. Each Party shall ensure that its judicial authorities have the authority to require the applicant, with respect to provisional measures referred to in paragraphs 1 and 2, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the

¹ For the purposes of this Article, a Party may provide that a "third party" includes an intermediary.

applicant's right is being infringed or that such infringement is imminent, and order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

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

ARTICLE 17.58 - Remedies

1. Each Party shall ensure that its judicial authorities have the authority to 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 destruction, or at least the definitive removal from the channels of commerce, of goods that they have found to be infringing an intellectual property right.¹ If appropriate, a Party's judicial authorities may also order destruction of materials and implements predominantly used in the creation or manufacture of such goods.

2. Each Party shall ensure that its judicial authorities have the authority to order that the measures specified in paragraph 1 are carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

ARTICLE 17.59 - Injunctions

Each Party shall ensure that, its judicial authorities have the authority to issue against an infringer of an intellectual property right, as well as, where appropriate and subject to the Party's law, against a third party² over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right, an injunction aimed at prohibiting or stopping the infringement.³

ARTICLE 17.60 - Alternative measures

Each Party may provide that the judicial authorities, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 17.58 (Remedies) or Article 17.59 (Injunctions), may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in those Articles, in accordance with each Party's law.

ARTICLE 17.61 - Damages

¹ In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed is not sufficient, other than in exceptional circumstances, to permit the release of goods into the channels of commerce.

² For the purposes of this Article, a Party may provide that a "third party" includes an intermediary.

³ This Section is without prejudice to Article 44(2) of the TRIPS Agreement.

1. Each Party shall ensure that its judicial authorities have the authority to order the infringer, who knowingly or with reasonable grounds to know, engaged in an 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.
2. In determining the amount of damages for infringements of intellectual property rights, each Party shall ensure its judicial authorities have the authority to take into account all appropriate aspects for the calculation, both economic and other factors subject to each Party's laws and regulations, such as the moral prejudice caused to the right holder, or lost profits suffered by the injured party. A Party may provide in its law presumptions for determining the amount of damages.
3. Where the infringer did not knowingly, or with reasonable grounds to know, engage in an infringing activity, a Party may provide that the judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages, which may be pre-established.

ARTICLE 17.62 - Legal costs

Each Party shall ensure that its judicial authorities have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of intellectual property rights, that the successful party be awarded payment by the unsuccessful party of legal costs and other expenses, which may include appropriate attorney's fees, as provided for under its law.

ARTICLE 17.63 - Publication of judicial decisions

In civil judicial proceedings instituted for infringement of an intellectual property right, each Party shall take appropriate measures, in accordance with its law, to publish or make available to the public information on final judicial decisions. Each Party may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising of such decisions.

ARTICLE 17.64 - Presumption of authorship or ownership

In civil proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated as the author or related right holder of the work or subject matter in the usual manner is the designated right holder of such work or subject matter, and consequently entitled to institute infringements proceedings.

ARTICLE 17.65 - Administrative procedures

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