

CHAPTER THIRTEEN INTELLECTUAL PROPERTY RIGHTS

Section A: General Provisions

Article 13.1: Effectuation

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

Article 13.2: International Agreements

1. Each Party reaffirms its existing rights and obligations with respect to each other under the TRIPS Agreement and any other agreements relating to intellectual property to which they are parties. To this end, nothing in this Chapter shall derogate from the existing rights and obligations that the Parties have to each other under the TRIPS Agreement or any other intellectual property agreements.

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

- (a) the *Patent Law Treaty* (2000);
- (b) the *Hague Agreement Concerning the International Registration of Industrial Designs* (1999);
- (c) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (1989);
- (d) the *International Convention for the Protection of New Varieties of Plants (1991)* (hereinafter referred to as the “UPOV Convention 1991”); and
- (e) the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977)*, as amended in 1980.

Article 13.3: More Extensive Protection and Enforcement

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

Article 13.4: National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals¹ of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection² and enjoyment of such intellectual property rights and any benefits derived from such rights. With regard to Article 13.45 and Article 13.46.1(c), however, a Party may limit the rights of performers, producers of phonograms and broadcasting organizations of the other Party to the rights its persons are accorded in the territory of the other Party.

2. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

- (a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and
- (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 to which either Party is a party concluded under the auspices of the *World Intellectual Property Organization* (hereinafter referred to as “WIPO”) in relation to the acquisition or maintenance of intellectual property rights.

Article 13.5: Application of Chapter to Existing Subject Matter and Prior Acts

1. Except as it provides otherwise, including in Article 13.35, this Chapter gives rise to obligations in respect of all subject matter existing at the date this

¹ For purposes of Articles 13.4.1 and 13.4.2 “nationals” of a Party shall include, in respect of the relevant right, any person (as defined in Article 1.4 (Definitions)), of that Party that would meet the criteria for eligibility for protection of that right provided for in the agreements mentioned in Article 13.2 and the TRIPS Agreement.

² For purposes of Article 13.4.1, “protection” includes: (1) matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter; and (2) the prohibition on circumvention of effective technological measures set out in Article 13.38, the rights and obligations concerning rights management information set out in Article 13.39 and protection of encrypted program-carrying signals set out in Articles 13.41.1 and 13.41.2.

Agreement enters into force that is protected on that date in the territory of the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

2. Except as otherwise provided in this Chapter, including in Article 13.35, a Party shall not be required to restore protection to the subject matter that on the date this Agreement enters into force has fallen into the public domain in the territory of the Party where the protection is claimed.

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

Article 13.6: Transparency

With the object of making the protection and enforcement of intellectual property rights transparent, each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights are in writing and are published³, or where publication is not practicable, made publicly available, in its national language in such a manner as to enable governments and right holders to become acquainted with them.

Section B: Genetic Resources and Associated Traditional Knowledge

Article 13.7: Genetic Resources and Associated Traditional Knowledge

1. The Parties acknowledge paragraph 19 of the Ministerial Declaration (WT/MIN/(01)DEC/1), adopted on November 14, 2001 by the WTO Ministerial Conference, on the relationship between the TRIPS Agreement and the *Convention on Biological Diversity* (hereinafter referred to as “CBD”) and the protection of genetic resources, traditional knowledge, and folklore.

2. The Parties recognize the value and importance of biological diversity, traditional knowledge as well as the contribution of knowledge, innovations, and practices of indigenous peoples and local communities to the conservation and sustainable use of biological diversity. Each Party shall have the authority to determine access to its genetic resources in accordance with its domestic legislation and endeavor to create conditions to facilitate transparent access to its genetic resources for environmentally sound uses.

³ For greater certainty, a Party may satisfy the requirement in Article 13.6 to publish a law, regulation, or procedure by making it available to the public on the Internet.

3. Subject to their respective domestic legislations and the CBD, the Parties respect knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations, and practices.

4. Each Party shall endeavor to seek ways to share information on patent applications based on genetic resources or associated traditional knowledge by providing:

- (a) publicly accessible database that contains relevant information;
and
- (b) opportunities to file prior art to the appropriate examining authority in writing.

5. The Parties agree to share views and information on discussions in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore, the WTO TRIPS Council, and any other relevant fora in addressing matters related to genetic resources and traditional knowledge.

Section C: Geographical Indications

Article 13.8: Definitions

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

Article 13.9: Protection of Geographical Indications

Each Party shall ensure in its laws and regulations adequate and effective means to protect geographical indications. Each Party recognizes that such protection may be provided through a trademark system, a *sui generis* system, or other legal means, provided that all requirements under the TRIPS Agreement are fulfilled.

Article 13.10: Domestic Administrative Procedures for the Protection of Geographical Indications

1. Each Party shall establish or maintain domestic administrative procedures for the registration and protection of geographical indications, whether through a trademark or a *sui generis* system.
2. With respect to the procedures referred to in paragraph 1, each Party shall with regard to applications for that protection:
 - (a) ensure that its laws and regulations governing the protection of geographical indications are readily available to the public and clearly set out the procedures relating to the protection of geographical indications including procedures relating to the filing of applications; and
 - (b) make available information to allow the public to obtain guidance concerning the procedures for filing applications for the protection of geographical indications, and allow an applicant or their representative to ascertain the status of specific applications.
3. With respect to the procedures referred to in paragraph 1, each Party shall provide procedures that allow interested persons to oppose the protection of a geographical indication, and that allow for any such protection to be refused at least on the ground that the geographical indication is a term customary in common language as the common name⁴ for the relevant good in the territory of the Party.

Article 13.11: Date of Protection of a Geographical Indication

The protection of a geographical indication through a Party's domestic administrative procedures referred to in Article 13.10 shall commence no earlier than the filing date⁵ or registration date of the application for the protection in that Party or the registration date in that Party.

Article 13.12: Limitations

⁴ Where a Party applies Article 13.10 to geographical indications for wines and spirits or applications for those geographical indications, the Parties understand that nothing in this Section shall require a Party to protect a geographical indication of the Party with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety that exists in the territory of that Party.

⁵ For greater certainty, where a Party protects a geographical indication through its trademark system, the filing date referred to in this Article includes, as applicable, the priority filing date under the Paris Convention.

This Section shall not prejudice the rights and obligations under free trade agreements that each Party previously concluded with a non-Party.

Section D: Trademarks

Article 13.13: Trademarks Protection

1. Neither Party shall require, as a condition of registration, that signs be visually perceptible, nor may either Party shall deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or a scent⁶.
2. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign, for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Parties making rights available on the basis of use.
3. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than 10 years.
4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

Article 13.14: Term Customary in Common Language

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

⁶ A Party may require an adequate description, or graphical representation, or both, as applicable, of the trademark.

Article 13.15: Exceptions

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

Article 13.16: Well-Known Trademarks

1. Neither Party shall require, as a condition for determining that a mark is a well-known mark, that the trademark has been registered in the territory of the Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.

2. Article 6bis of the *Paris Convention for the Protection of Industrial Property* (1967) (hereinafter referred to as “Paris Convention”) shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark⁷, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

3. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark or geographical indication that is identical or similar to a well-known trademark, for related goods or services, if the use of that trademark or geographical indication is likely to cause confusion, or to cause mistake, or to deceive or risk associating the trademark or geographical indication with the owner of the well-known trademark, or to dilute⁸ the distinctiveness or reputation⁹ of the well-known trademark or constitutes unfair exploitation of the reputation of the well-known trademark.

Article 13.17: Registration and Application of Trademarks

⁷ For purposes of determining whether a mark is well-known, neither Party shall require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

⁸ For the purposes of this Article, Korea considers that "the dilution of distinctiveness or reputation of a well-known trademark" is defined as provided in Article 34.1.11 of the *Trademark act of Korea* (Act No. 18999, Dec. 18, 2022).

⁹ For Ecuador, the term **reputation** means commercial value.

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

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

2. Each Party shall provide a:

- (a) system for the electronic application for trademarks; and
- (b) publicly available electronic database of trademark applications or registrations.

Article 13.18: Classification of Goods and Services

Each Party shall provide that:

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

publication, they appear in different classes of the Nice Classification.

Section E: Patents

Article 13.19: Patentable Subject Matter

1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that they are new, involve an inventive step, and are capable of industrial application.
2. Each Party may exclude from patentability:
 - (a) inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law;
 - (b) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; and
 - (c) plants and animal other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.

Article 13.20: Exceptions

1. Each Party may provide 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.
2. Consistent with paragraph 1, if a Party permits a third person to use the subject matter of a subsisting patent to generate information necessary to support an application for marketing approval of a pharmaceutical product, that Party shall provide that any product produced under such authority shall not be made, used, or sold in its territory other than for purposes related to generating such information to support an application for meeting marketing approval requirements of that Party, and if the Party permits exportation of such product, the Party shall provide that the product shall only be exported

outside its territory for purposes of generating information to support an application for meeting marketing approval requirements of that Party.

Article 13.21: Grace Period

Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure:

- (a) was made or authorized by, or derived from, the patent applicant; and
- (b) occurred within 12 months prior to the date of filing of the application in the territory of the Party.

Article 13.22: Amendments, Corrections, and Observations

Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections, and observations in connection with their applications. Each Party shall ensure that an amendment to the specification or drawing shall be made within the scope of the features disclosed in the specification or drawing initially attached to the patent application.

Article 13.23: Claimed Invention

1. Each Party shall provide that a disclosure of a claimed invention shall be considered to be sufficiently clear and complete if it provides information that allows the invention to be made and used by a person skilled in the art, without undue experimentation, as of the filing date.

2. Each Party shall provide that a claimed invention:

- (a) is sufficiently supported by its disclosure if the disclosure allows a person skilled in the art to extend the teaching therein to the entire scope of the claim, thereby showing that the applicant does not claim subject matter which the applicant had not recognized and described or possessed on the filing date; and
- (b) is industrially applicable if it has a specific, substantial, and credible utility.

Article 13.24: Accelerated Examination

Each Party may provide an applicant with accelerated examination for the patent application on conditions, among others, that the claimed invention is:

- (a) being practiced after publication of the application by a person other than the applicant; or
- (b) being practiced or being prepared to be practiced by the patent applicant.

Article 13.25: Simplification of Procedures

1. A Party may require the translation of an earlier application for a patent whose priority is claimed where the earlier application is not in a language accepted by the competent authority of the Party.
2. Neither Party shall require the certification of translation of an earlier application for a patent whose priority is claimed.

Section F: Measures Related to Certain Regulated Products

Article 13.26: Measures Related to Certain Regulated Products

1. Each Party shall protect undisclosed test or other data related to the safety and efficacy of pharmaceutical and agricultural chemical products, in accordance with Article 39 of the TRIPS Agreement and its domestic legislation.
2. When the marketing of a pharmaceutical and agricultural chemical product in a Party requires authorization from its competent authorities, that Party shall make its best efforts to process the corresponding application expeditiously to avoid unreasonable delays. The Parties shall cooperate and provide mutual assistance to achieve this objective.

Section G: Designs

Article 13.27: Designs Protection

1. The Parties shall ensure in their domestic laws adequate and effective protection of industrial designs including a part(s) of articles by providing a period of protection of at least 10 years.
2. The owner of a protected design shall have the right to prevent third parties not having the owner's consent, at least from making, offering for sale, selling, importing, or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes.
3. Each Party shall provide that an applicant for an industrial design registration may request the competent authority of the Party to maintain the design unpublished for a period designated by the applicant in the request, but not exceeding the period provided for in the laws and regulations of the Party.
4. The protection conferred per paragraph 1 shall not extend to designs dictated entirely by technical or functional considerations.
5. Each Party shall ensure that a claimed industrial design shall not be new, if it is publicly known, described in a publication distributed or made available to the public through telecommunication line in any Party or in any non-Party before the filing date of the application for the registration of the industrial design or, where priority is claimed, before the priority date of the application.

Article 13.28: Exceptions

Each Party may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

Section H: Unfair Competition and Undisclosed Information

Article 13.29: Unfair Competition

1. The Parties shall be bound to assure to the nationals of each Party effective protection against unfair competition. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. The following in particular shall be prohibited:

- (a) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
- (b) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
- (c) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods; and
- (d) acts of using, or acquiring or holding the right to use, a domain name identical with or confusingly similar to a well-known trademark in each Party for the purposes specified in that Party's laws and regulations, such as regarding the intention to gain unfair profit or to cause damage to another person.

2. Each Party shall endeavor to provide the legal means to prevent the use of the unregistered appearance of a product, in case that the contested use results from copying the unregistered appearance of such product.

Article 13.30: Undisclosed Information

The Parties shall ensure in its laws and regulations adequate and effective protection of undisclosed information in accordance with Article 39 of the TRIPS Agreement.

Section I: Plant Varieties

Article 13.31: Plant Varieties

1. The Parties shall cooperate to promote and ensure the protection of plant varieties based on the UPOV Convention 1991, including the optional exception to the right of the breeder as referred to in Article 15(2) of such Convention.

2. The signing of this Agreement shall be deemed to provide protection of Plant Breeder's Rights. Each Party shall provide that the protection shall be granted where plant varieties fulfill the conditions of novelty, distinctness, uniformity, stability and are designated with suitable denominations which will be their generic designations. Also each Party shall provide that the

identity of the variety shall be determined unambiguously and shall remain unchanged throughout the period of protection.

3. The Parties shall protect essentially derived varieties as defined by Article 14(5)(b) of the UPOV Convention 1991, subject to and consistent with their laws and regulations.

Section J: Copyright and Related Rights

Sub-Section A: Copyright and Related Rights

Article 13.32: Right of Reproduction

Each Party shall provide that authors, performers, producers of phonograms¹⁰ and broadcasting organizations have the right to authorize or prohibit¹¹ all reproductions of their works, performances¹², phonograms, and broadcasts in any manner or form, permanent or temporary^{13 14}.

Article 13.33: Right of Distribution

1. Each Party shall provide to authors, performers, and producers of phonograms the right to authorize or prohibit the making available to the

¹⁰ “Authors,” “performers,” “producers of phonograms” and “broadcasting organizations” in this Chapter refer also to any successors in title.

¹¹ With respect to copyrights and related rights, the “right to authorize or prohibit” for purposes of this Chapter refers to exclusive rights.

¹² With respect to copyright and related rights, a **performance** for purposes of this Chapter means a performance fixed in a phonogram unless otherwise specified.

¹³ Each Party shall confine limitations or exceptions to the rights described in Article 13.32 to certain special cases that do not conflict with a normal exploitation of the work, performance, phonogram and broadcast and do not unreasonably prejudice the legitimate interests of the right holder. For greater certainty, each Party may adopt or maintain limitations or exceptions to the rights described in Article 13.32 for fair use, as long as any such limitation or exception is confined as stated in the previous sentence.

¹⁴ It is the Parties understanding that temporary reproductions shall include temporary storage in electronic form.

public of the original and copies¹⁵ of their works, performances, and phonograms through sale or other transfer of ownership.

2. Nothing in this Agreement shall affect the freedom of the Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph 1 applies after the first sale or other transfer of ownership of the original or a copy of the work, performance, or phonogram with the authorization of the author, performer, or phonogram producer.

Article 13.34: Term of Protection

1. Each Party shall provide that, where the term of protection of a work is to be calculated 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.

2. Each Party shall provide that the term of protection of broadcast shall not be less than 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

Article 13.35: Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement

Each Party shall apply Article 18 of the *Berne Convention for the Protection of Literary and Artistic Works* (hereinafter referred to as "Berne Convention") and Article 14.6 of the TRIPS Agreement, *mutatis mutandis*, to the subject matter, rights, and obligations in this Section.

Article 13.36: No Formality

Neither Party shall subject the enjoyment and exercise of the rights of authors, performers, producers of phonograms and broadcasting organizations provided for in this Chapter to any formality.

Article 13.37: Contractual Transfers

¹⁵ As used in Article 13.33, "copies" and "original and copies", being subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.

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

- (a) may freely and separately transfer that right by contract; and
- (b) by virtue of a contract, including contracts of employment underlying for the creation of works, performances, phonograms, and broadcasts shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.

Article 13.38: Technological Protection Measures

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that such person is pursuing that objective.

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes, of devices, products or components, or the provision of services which:

- (a) are promoted, advertised or marketed for the purpose of circumvention of;
- (b) have only a limited commercially significant purpose or use other than to circumvent; or
- (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,

any effective technological measures.

3. For the purposes of this Agreement, **technological measure** means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject matter, which are not authorized by the right holder of any copyright or any right related to copyright as provided for by each Party's legislation. Technological measures shall be deemed effective where the use of a protected work or other subject matter is controlled by the right holders through the application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter, or a copy control mechanism, which achieves the objective of protection.

4. The Parties shall confine exceptions and limitations to measure implementing paragraph 1 and 2 to the following activities:

- (a) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in those activities, for the sole purpose of achieving interoperability of an independently created computer program with other programs;
- (b) noninfringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfixed performance, or display of a work, performance or phonogram, and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of research consisting of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;
- (c) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a technology, product, service, or device that itself is not prohibited under the measures implementing paragraph 2;
- (d) noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network;
- (e) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work;
- (f) lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes;
- (g) access by a nonprofit library, archive, or educational institution to a work, performance, phonogram, or broadcast not otherwise available to it, for the sole purpose of making acquisition

decisions; and

- (h) noninfringing uses of a work, performance, or phonogram, in a particular class of works, performances, or phonograms when an actual or likely adverse impact on those noninfringing uses is demonstrated in a legislative or administrative proceeding, provided that any limitation or exception adopted in reliance on this clause shall have effect for a renewable period of not more than four years from the date the proceeding concludes.

Article 13.39: Rights Management Information

1. Each Party shall provide adequate and effective legal remedies against any person who without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright or related right,

- (a) knowingly removes or alters any rights management information;
- (b) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or
- (c) distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances, phonograms, or broadcasts knowing that rights management information has been removed or altered without authority.

Each Party shall provide for penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities. These penalties shall include the application to such activities of the remedies and authorities listed in subparagraphs (a), (b), and (e) of Article 13.68 as applicable to infringements, *mutatis mutandis*.

2. Each Party shall confine exceptions and limitations to measures implementing paragraph 1 to lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes.

3. **Rights management information** means:

- (a) information that identifies a work, performance, phonogram, or broadcast; the author of the work, the performer of the performance, the producer of the phonogram, or the broadcasting organization of the broadcast; or the owner of any right in the work, performance, phonogram, or broadcast;
- (b) information about the terms and conditions of the use of the work, performance, phonogram, or broadcast; or
- (c) any numbers or codes that represent such information

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

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

Article 13.40: Limitations and Exceptions

The Parties may, in their legislation, provide for limitations and exceptions to, the rights granted to the right holders referred to in this Section in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holders.

Article 13.41: Protection of Encrypted Program-Carrying Satellite and Cable Signals

1. Each Party shall provide for adequate legal protection and effective legal remedies against any activity to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite or cable signal without the authorization of the lawful distributor of such signal.

2. Each Party shall provide for civil remedies, including compensatory damages, for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted programming signal or its content.

Article 13.42: Collective Management of Copyright and Related Rights

Each Party shall endeavor to facilitate the establishment of arrangements between their respective collecting societies for the purposes of mutually ensuring easier access and delivery of content between the Parties, as well as ensuring mutual transfer of royalties for use of the Parties' works, performances, or phonograms. Each Party shall endeavor to achieve a high level of rationalization and to improve transparency with respect to the execution of the task of their respective collecting societies.

Sub-Section B: Copyright

Article 13.43: Right of Communication to the Public

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

Sub-Section C: Related Rights

Article 13.44: Rights of Performers

Each Party shall provide to performers the right to authorize or prohibit:

- (a) the broadcasting and communication to the public of their unfixed performances, except where the performance is already a broadcast performance;
- (b) the fixation of their unfixed performances; and
- (c) making available to the public of their performances in such a way that members of the public may access them from a place and at a time individually chosen by them.

Article 13.45: Right of Phonogram Producers

Each Party shall provide to phonogram producers the right to authorize or prohibit the making available to the public of their phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

Article 13.46: Right of Broadcasting Organizations

1. Each Party shall provide broadcasting organizations with the exclusive right to authorize or prohibit:

- (a) the re-broadcasting of their broadcasts;
- (b) the reproduction of fixations of their broadcasts; and
- (c) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee. It shall be a matter for each Party's domestic law where protection of this right is claimed to determine the conditions under which it may be exercised.

2. Notwithstanding Article 13.40 neither Party shall permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal.¹⁶

Section K: Enforcement of Intellectual Property Rights

Sub-Section A: General Obligations

Article 13.47: Enforcement Practices with respect to Intellectual Property Rights

1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual

¹⁶ For purposes of this paragraph, and for greater certainty, retransmission within a Party's territory over a closed, defined, subscriber network that is not accessible from outside the Party's territory does not constitute retransmission on the Internet.

property rights be in writing and reasoned¹⁷. Each Party shall also provide that those decisions and rulings be published¹⁸ or, where publication is not practicable, otherwise made available to the public, in its national language in such a manner as to enable governments and right holders to become acquainted with them.

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

Article 13.48: Presumptions

In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name¹⁹ is indicated in the usual manner is the designated right holder in such work, performance, phonogram, or broadcast. In civil, administrative, and criminal proceedings involving trademarks, each Party shall provide for a rebuttable presumption that a registered trademark is valid. In civil and administrative proceedings involving patents, each Party shall provide for a rebuttable presumption that a patent is valid, and shall provide that each claim of a patent is presumed valid independently of the validity of the other claims.

Sub-Section B: Civil and Administrative Procedures and Remedies

Article 13.49: Entitled Right Holders

Each Party shall make available to right holders²⁰ civil judicial procedures concerning the enforcement of any intellectual property right.

¹⁷ A decision or ruling may be considered reasoned if they state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based.

¹⁸ A Party may satisfy the publication requirement in Article 13.47 by making the decision or ruling available to the public on the Internet.

¹⁹ For purposes of copyright, the name of the author may include its pseudonym, where the pseudonym adopted by the author leaves no doubt as to his or her identity.

²⁰ For purposes of Article 13.49, “right holder” includes a federation or an association having the legal standing and authority to assert such rights, and also includes a person that exclusively has any one or more of the intellectual property rights encompassed in a given intellectual property.

Article 13.50: Damages

1. Each Party shall provide that when setting the damages, its judicial authorities:

- (a) take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or
- (b) as an alternative to subparagraph (a), may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorization to use the intellectual property right in question.

2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in an infringing activity, the Parties may provide that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

Article 13.51: Legal Costs

Each Party shall ensure that reasonable and proportionate legal costs and other procedural expenses, including attorney's fees, incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, except for equity or other reasons, in accordance with its domestic legislation.

Article 13.52: Seizure

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

Article 13.53: Corrective Measures

1. Each Party shall adopt necessary measures to provide that its competent judicial authorities may order, upon request of the applicant and without prejudice to any damages to the right holder by reason of the infringement, and without compensation of any sort to the infringer, definitive removal from the channels of commerce or the destruction of goods that they have found to be infringing an intellectual property right. If appropriate, the competent judicial authorities may also order the destruction of materials and implements principally used in the creation or manufacture of those goods.

2. The judicial authorities shall order that the measures, as referred to in paragraph 1, shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

Article 13.54: Right of Information

Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to provide, for the purpose of collecting evidence, any information that the infringer possesses or controls regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of such goods or services, including the identification of third persons involved in the production and distribution of the infringing goods or services or in their channels of distribution, and to provide this information to the right holder or the judicial authorities.

Article 13.55: Orders Issued by Competent Authorities

Each Party shall provide that its judicial authorities have the authority to:

- (a) impose sanctions on, in appropriate cases, a party to a civil judicial proceeding who fails to abide by valid orders issued by such authorities; and
- (b) impose sanctions on parties to a civil judicial proceeding, their counsel, experts, or other persons subject to the court's jurisdiction, for violation of judicial orders regarding the protection of confidential information produced or exchanged in a proceeding.

Article 13.56: Administrative Procedures

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

Article 13.57: Prohibition of Infringing Imports and their Exportation

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

Article 13.58: Experts' Costs

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

Article 13.59: Alternative Dispute Resolution

Each Party shall permit use of alternative dispute resolution procedures to resolve civil disputes concerning copyright and related rights.

Article 13.60: Provisional Measures

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

Sub-Section C: Special Requirements Related to Border Measures

Article 13.61: Information Provided by Right Holders to Competent Authorities

Each Party shall provide that any right holder initiating procedures for its competent authorities to suspend release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods²¹ into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by its competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures. Each Party shall provide that the application to suspend the release of goods shall apply to all points of entry to its territory.

Article 13.62: Reasonable Security or Assurance

Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that the security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party may provide that the security may be in the form of a bond conditioned to hold the importer or owner of the imported merchandise harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

²¹ For purposes of Articles 13.61 through 13.66:

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

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

Article 13.63: Information Provided by Competent Authorities to Right Holders

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

Article 13.64: *Ex Officio* Borders Enforcement

Each Party shall provide that its competent authorities may initiate border measures *ex officio*²² with respect to imported, exported, or in-transit merchandise²³, or merchandise in free trade zones, that is suspected of being counterfeit or confusingly similar trademark goods, or pirated copyright goods.

Article 13.65: Destruction

Each Party shall provide that goods that have been suspended from release by its customs authorities, and that have been forfeited as pirated or counterfeit, shall be destroyed, except in exceptional circumstances. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.

Article 13.66: Fees

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

Sub-Section D: Criminal Procedures and Remedies

²² For greater certainty, the Parties understand that *ex officio* action does not require a formal complaint from a private party or right holder.

²³ For purposes of Article 13.64, **in-transit merchandise** means goods under “Customs transit” and goods “transshipped,” as defined in the *International Convention on the Simplification and Harmonization of Customs Procedures* (hereinafter referred to as “Kyoto Protocol”).

Article 13.67: Criminal Procedures And Penalties

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights infringements on a commercial scale. Each Party shall treat willful importation or exportation of counterfeit or pirated goods as unlawful activities subject to criminal penalties²⁴.

Article 13.68: Penalties, Seizure, Forfeiture, and Destruction

Further to Article 13.67, each Party shall provide:

- (a) penalties that include sentences of imprisonment or monetary fines sufficient to provide a deterrent to future infringements, consistent with a policy of removing the infringer's monetary incentive. Each Party shall further encourage judicial authorities to impose those penalties at levels sufficient to provide a deterrent to future infringements, including the imposition of actual terms of imprisonment when criminal infringement occurs for purposes of commercial advantage or private financial gain;
- (b) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements used in the commission of the offense, any documentary evidence relevant to the offense, and any assets traceable to the infringing activity. Each Party shall provide that such orders need not individually identify the items that are subject to seizure, so long as they fall within general categories specified in the order;
- (c) that its judicial authorities shall have the authority to order, among other measures, the forfeiture of any assets traceable to the infringing activity;
- (d) that its judicial authorities shall, except in exceptional cases, order:
 - (i) the forfeiture and destruction of all counterfeit or pirated goods, and any articles consisting of a counterfeit mark; and

²⁴ A Party may comply with the obligation in Article 13.67 in relation to exportation of pirated goods through its measures concerning distribution.

- (ii) the forfeiture and/or destruction of materials and implements that have been used in the creation of pirated or counterfeit goods.

Each Party shall further provide that forfeiture and destruction under this subparagraph and subparagraph (c) shall occur without compensation of any kind to the defendant; and

- (e) that, in criminal cases, its judicial or other competent authorities shall keep an inventory of goods and other material proposed to be destroyed, and shall have the authority temporarily to exempt these materials from the destruction order to facilitate the preservation of evidence on notice by the right holder that it wishes to bring a civil or administrative case for damages.

Article 13.69: Protection of Motion Picture or Audiovisual Work

Each Party shall provide for criminal procedures and penalties to be applied in accordance with its laws and regulations for the willful unauthorized copy of a cinematographic work, or any part thereof, from a performance in a movie theater on a commercial scale.

Sub-Section E: Effective Action against Infringement in the Digital Environment

Article 13.70: Liability of Online Service Providers²⁵

The Parties recognize that the services of intermediaries may be used by third parties for infringing activities. To ensure the free movement of information services and at the same time enforce copyright and related rights in the digital environment, each Party shall provide for the measures set out in Articles 13.71 through 13.74 for intermediary service providers where they are in no way involved with the information transmitted.

Article 13.71: Liability of Online Service Providers: “Mere Conduit”

²⁵ For the purposes of the function referred to in Article 13.71, **service provider** means a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the user’s choosing, and for the purpose of the functions referred to in Articles 13.72 and 13.73 **service provider** means a provider or operator of facilities for online services or network access.

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the Parties shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:

- (a) does not initiate the transmission;
- (b) does not select the receiver of the transmission; and
- (c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as such storage takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

3. This Article shall not affect the possibility, in accordance with the Parties' legal systems, of a judicial or administrative authority requiring the service provider to terminate or prevent an infringement.

Article 13.72: Liability of Online Service Providers: "Caching"

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that the provider:

- (a) does not modify the information;
- (b) complies with conditions on access to the information;
- (c) complies with rules regarding updating of the information, specified in a manner widely recognized and used by industry;
- (d) does not interfere with the lawful use of technology, widely recognized and used by industry, to obtain data on the use of the information; and

- (e) acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a judicial or an administrative authority has ordered such removal or disablement.

2. This Article shall not affect the possibility, in accordance with the Parties' legal systems, of a judicial or administrative authority requiring the service provider to terminate or prevent an infringement.

Article 13.73: Liability of Online Service Providers: "Hosting"

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that the provider:

- (a) does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
- (b) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

3. This Article shall not affect the possibility, in accordance with the Parties' legal systems, of a judicial or administrative authority requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility of the Parties establishing procedures governing the removal or disabling of access to information.

Article 13.74: No General Obligation to Monitor

1. The Parties shall not impose a general obligation on providers, when providing the services covered by Articles 13.71 through 13.73, to monitor the information which they transmit or store, nor a general obligation to actively seek facts or circumstances indicating illegal activity.

2. The Parties may establish obligations for information society service providers to promptly inform the competent authorities of alleged illegal

activities undertaken or information provided by recipients of their service, or to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

Article 13.75: Measures Against Repetitive Infringement on the Internet

Each Party shall take effective²⁶ measures to curtail repetitive infringement of copyright and related rights on the Internet or other digital networks.

Section L: Committee on Intellectual Property Rights

Article 13.76: Committee on Intellectual Property Rights

1. The Parties hereby establish the Committee on Intellectual Property Rights (hereinafter referred to in this Article as “Committee”).

2. For the purposes of the effective implementation and operation of this Chapter, the functions of the Committee shall include, but are not limited to:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) discussing ways to facilitate cooperation between the Parties;
- (c) exchange of information on laws, systems and other issues of mutual interest concerning intellectual property rights;
- (d) carrying out other functions as may be delegated by the Joint Committee; and
- (e) seeking to resolve disputes that may arise regarding the interpretation or application of this Chapter.

3. The Committee shall meet within one year after the date this Agreement enters into force and, thereafter, at the request of a Party or of the Joint Committee. These meetings may be carried out through any agreed means. The Committee shall inform the Joint Committee of the results of each meeting.

²⁶ A measure shall not be considered ineffective for the sole fact that it does not quantitatively curb repetitive infringement statistically in the territory of the Party.

Section M: Cooperation and Transfer of Technology

Article 13.77: Cooperation

1. The Parties agree to exchange views and information on the legal framework concerning the protection and enforcement of intellectual property rights in accordance with their respective laws, regulations and policies to:

- (a) improve and strengthen intellectual property systems and capacity building to promote efficient enforcement of intellectual property rights; or
- (b) stimulate the creation and development of intellectual property by persons of each Party, in particular small and medium-sized enterprises (SMEs).

2. The Parties will encourage and facilitate the following activities, including, but not limited to:

- (a) educational projects on the use of intellectual property including information systems on intellectual property;
- (b) training and specialization courses for officials on intellectual property and other mechanisms;
- (c) licensing, patent technology and market intelligence;
- (d) protection of plant varieties, copyright, industrial designs, including exchange of experience and technical knowledge; and
- (e) other topics of mutual interest regarding intellectual property.

3. The Parties shall designate contact points responsible for fulfilling the objective of this Article and for facilitating the development of cooperation. The contact points are:

- (a) For Korea, The Ministry of Trade, Industry and Energy, or its successors; and
- (b) For Ecuador, The Ministry of Production, Foreign Trade, Investment and Fisheries, or its successors.