

Key IPR Provisions of the Draft India-European Union Free Trade Agreement

Pale yellow background indicates a near match between India's and EU's proposed language, with variations in **bright yellow**

Pale blue background indicates that India's proposed language mirrors that used in TRIPS

Green background indicates no difference in language between India and EU

Art.	India	EU	TRIPS
CONTEXT			
1.1	The Parties agree that fostering innovation and creativity improves competitiveness and is a crucial element in their economic partnership, in achieving sustainable development, promoting trade between them.		Preamble <i>Members, Desiring</i> to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and

<p>1.2 Parties also recognise that the protection and enforcement of intellectual property, in a manner appropriate to and justified by their levels of development, plays a key role in fostering creativity, innovation and competitiveness.</p>	<p>procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade; <i>Recognizing</i>, to this end, the need for new rules and disciplines concerning:</p> <p>(a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions; (b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights; (c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems; (d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and (e) transitional arrangements aiming at the fullest participation in the results of the negotiations;</p> <p><i>Recognizing</i> the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods; <i>Recognizing</i> that intellectual property rights are private rights; <i>Recognizing</i> the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives; <i>Recognizing</i> also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in eu commitment india developmentorder to enable them to create a sound and viable technological base; <i>Emphasizing</i> the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures; <i>Desiring</i> to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as “WIPO”) as well as other relevant international organizations; <i>Hereby agree</i> as follows:</p>
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OBJECTIVES			
2(a) /1(a))	achieve a level of protection and enforcement of intellectual property rights that is consistent with the TRIPS Agreement, results in the transfer and dissemination of technology in an adequate and effective manner and is conducive to the social and economic welfare and sustainable development of the Parties	facilitate the production and commercialization of innovative and creative products between the Parties; and	7 The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.
2(b) /1(b))	prevent the abuse of intellectual property rights and resort to practices that unreasonably restrain trade or adversely affect the transfer of technology	achieve an adequate and effective level of protection and enforcement of intellectual property rights	
INTELLECTUAL PROPERTY			
Nature and Scope of Obligations			
8.1. 2	The Parties shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which both are parties including the WTO Agreement on Trade-related Aspects of Intellectual Property (hereinafter called TRIPS Agreement)	The provisions of this chapter shall complement and further specify the rights and obligations between the Parties beyond those under the TRIPS Agreement and other international treaties in the field of intellectual property to which they are parties.	<p>1.1 Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.</p> <p>1.3 Members shall accord the treatment provided for in this Agreement to the nationals of other Members. (1) In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions. (2) Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the “Council for TRIPS”).</p>

<p>8.2</p>	<p>EU and India agree that the principles set out in Article 8 of the TRIPS Agreement apply to this Section. Nothing in this Agreement shall be construed as to impair the capacity of the Parties to promote access to medicines.</p>	<p>EU and India agree that the principles set out in Article 8 of the TRIPS Agreement apply to this Section. Nothing in this Agreement shall be construed as to impair the capacity of the Parties to promote access to medicines.</p>	<p>8.1 Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.</p> <p>8.2 Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.</p>
	<p>The Parties also agree that an adequate and effective enforcement of intellectual property rights should take account of the development needs of India, provide a balance of rights and obligations between right holders and users and allow both parties to protect public health and nutrition.</p>		
<p>8.3</p>	<p>For the purpose of this Agreement, intellectual property rights shall refer to those rights mentioned in the TRIPS Agreement.</p>	<p>For the purpose of this Agreement, intellectual property rights embody copyright, including copyright in computer programs and in databases, and rights related to copyright, rights related to patents, trademarks, trade names in so far as these are protected as exclusive property rights in the domestic law concerned, designs, layout-designs (topographies) of integrated circuits, geographical indications, including designations of origin, indications of source, plant varieties, protection of undisclosed information and the protection against unfair competition as referred to in Article 10<i>bis</i> of the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967)</p> <p>[Paris Convention, 10<i>bis</i> (1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.</p> <p>(2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.</p> <p>(3) The following in particular shall be prohibited:</p> <p>(i) 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;</p>	<p>1.2 For the purposes of this Agreement, the term “intellectual property” refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.</p> <p>[These include:</p> <p>Copyright and Related Rights</p> <p>10.1 Computer programs, whether in source or object code, must be protected as literary works under the Berne Convention.</p> <p>10.2 Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected "as such." The protection does not extend to, but is without prejudice to any copyright subsisting in, the data or material itself.</p> <p>Trademarks</p> <p>Geographical Indications</p> <p>Industrial Designs</p> <p>Patents</p>

		<p>(ii) 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;</p> <p>(iii) 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.]</p>	<p>Layout-Designs (Topographies) of Integrated Circuits</p> <p>Undisclosed Information]</p>
Transfer of Technology			
<p>9.1</p>	<p>The Parties agree to exchange views and information on their domestic and international practices and policies affecting transfer of technology. This shall in particular include measures to facilitate information flows, business partnerships, licensing and subcontracting deals. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer in the host countries, including issues such as the relevant legal framework and development of human capital.</p> <p>[The proposed language here comes from the EU-CARIFORUM Economic Partnership Agreement (EPA). (Art. 142.1)]</p>		<p>7 The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.</p>
<p>9.2</p>	<p>The Parties agree to take measures, as appropriate, to prevent or control licensing practices or conditions pertaining to intellectual property rights [which] may adversely affect the international transfer of technology and that constitute an abuse of intellectual property rights by right holders or an abuse of obvious information asymmetries in the negotiation of licences.</p> <p>[Again, the proposed language comes from the EU-CARIFORUM EPA. (Art. 142.2)]</p>		<p>8.2 Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.</p> <p>40.1 Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.</p> <p>40.2 Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the</p>

			<p>relevant laws and regulations of that Member.</p> <p>40.3 Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.</p> <p>40.4 A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.</p>
9.3	<p>EC [European Community] Party shall facilitate and promote the use of incentives granted to institutions and enterprises in its territory for the transfer of technology to institutions and enterprises of the Republic of India.</p> <p>[Once more, the proposed language comes from the EU-CARIFORUM EPA. (Art. 142.3)]</p>		<p>66.2 Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.</p>
9.4	<p>The Parties shall ensure that the legitimate interests of the intellectual property right holders are protected as per the respective domestic laws.</p>		

Exhaustion

10.1 The Parties shall be free to establish the exhaustion of intellectual property rights as per Article 6 of the TRIP Agreement.

6 For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

National Treatment

3.1 Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection (3) of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

3.2 Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Most-Favoured-Nation Treatment

4 With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of

	<p>all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:</p> <p>(a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;</p> <p>(b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;</p> <p>(c) in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;</p> <p>(d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.</p>
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Article 11

COPYRIGHT AND RELATED RIGHTS

Protection Granted

<p>11.1 The Parties shall comply with: Article 1 through 21 of the Berne Convention for the Protection of Literary and Artistic works and appendix thereto (1971);</p> <p>[India is a contracting party to and enforces the Berne Convention.]</p>	<p>9.1 Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom.</p> <p>9.2 Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.</p>
<p>The Parties shall comply with: Article 1 through 21 of the Berne Convention for the Protection of Literary and Artistic works and appendix thereto (1971);</p>	<p>The Parties shall comply with: Article 1 through 21 of the Berne Convention for the Protection of Literary and Artistic works and appendix thereto (1971); Articles 1 through 22 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961); Articles 1 through 14 of the WIPO Copyright Treaty – WCT (Geneva, 1996); Articles 1 through 23 of the WIPO Performance and Phonograms Treaty – WPPT (Geneva, 1996).</p> <p>[India has signed and complies with the Rome Convention. And India has not signed either the WIPO Copyright Treaty or the WIPO Performance and Phonograms Treaty,</p>

collectively known as the WIPO Internet Treaties. Proposed amendments introduced to the Copyright Act of 1957 aim to bring India into basic conformity with the Internet Treaties.]

Duration of Author's Rights

<p>11.2 The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 60 years after his death, irrespective of the date when the work is lawfully made available to the public.</p> <p>In the case of work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.</p> <p>In the case of anonymous or pseudonymous works, the term of protection shall run for 60 years after the work is lawfully made available to the public, However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.</p> <p>In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within 60 years from their creation protection shall terminate.</p>	<p>The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for at least 60 years after his death, irrespective of the date when the work is lawfully made available to the public.</p> <p>In the case of work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.</p> <p>In the case of anonymous or pseudonymous works, the term of protection shall run for at least 60 years after the work is lawfully made available to the public, However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.</p> <p>In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within at least 60 years from their creation protection shall terminate.</p>	<p>12 Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.</p>
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Duration of Related Rights

<p>11.3 The rights of performers shall expire not less than 50 years after the date of the performance.</p> <p>The rights of producers of phonograms shall expire not less than 60 years after the publication is made.</p> <p>The rights of producers of the first publication of a film shall expire not less than 60 years after the publication is made.</p> <p>The term “film” shall designate a cinematographic or</p>	<p>The rights of performers shall expire not less than 50 years after the date of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire not less than 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.</p> <p>The rights of producers of phonograms shall expire not less</p>	<p>12 Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.</p> <p>14.5 The term of the protection available under this</p>
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	<p>audiovisual work or moving images, whether or not accompanied by sound.</p> <p>The rights of broadcasting organizations shall expire not less than 25 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.</p>	<p>than 50 years after the [fixation] is made. However, if the phonogram has been lawfully published within this period, the said rights shall expire not less than 50 years from the date of the first lawful publication. If no lawful publication has taken place within the period mentioned in the first sentence, and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire not less than 50 years from the date of the first lawful communication to the public.</p> <p>The rights of producers of the first fixation of a film shall expire not less than 60 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire not less than 50 years from the date of the first such publication or the first such communication to the public whichever is the earlier. The term “film” shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.</p> <p>The rights of broadcasting organizations shall expire not less than 25 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.</p>	<p>Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 [see below] shall last for at least 20 years from the end of the calendar year in which the broadcast took place.</p> <p>[14.3 Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).]</p>
11.4	Co-operation on Collective Management of Rights		
	<p>The Parties shall facilitate the establishment of arrangements between their respective collecting societies with the purpose of mutually ensuring easier access and delivery of content between the territories of the Parties, as well as ensuring mutual transfer of royalties for use of the Parties’ works or other protected subject matters. The Parties shall take such reasonable measures as may be available to them to achieve a high level of rationalization and transparency with regard to the execution of the tasks of their respective collecting societies.</p>	<p>The Parties shall take such reasonable measures as may be available to them to facilitate the establishment of arrangements between their respective collecting societies with the purpose of mutually ensuring easier access and delivery of content between the territories of the Parties, as well as ensuring mutual transfer of royalties for use of the Parties’ works or other protected subject matters. The Parties shall take such reasonable measures as may be available to them to achieve a high level of rationalization and transparency with regard to the execution of the tasks of their respective collecting societies.</p>	
Reproduction Right			

<p>11.4 <i>bis</i></p>		<p>The Parties shall provide for the exclusive right to authorize or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:</p> <ul style="list-style-type: none"> (a) for authors, of their works; (b) for performers, of fixations of their performances; (c) for phonogram producers, of their phonograms; (d) for the producers of the first fixations of films, in respect of the original and copies of their films; (e) for broadcasting organizations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite. 	<p>14.1 In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.</p> <p>14.3 Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).</p> <p>14.6 Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) [see below] shall also apply, mutatis mutandis, to the rights of performers and producers of phonograms in phonograms.</p> <p>[(1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.</p> <p>(2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew.</p>
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Broadcasting and Communication to the Public [EU: Right of communication to the public of works and right of making available to the public other subject matter]			
11.5.1		The Parties shall provide authors with the exclusive right to authorize or prohibit any 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 them from a place and at a time individually chosen by them.	
11.5.2		<p>The Parties shall provide for the exclusive right to authorize or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:</p> <p>(a) for performers, of fixations of their performances;</p> <p>(b) for phonogram producers, of their phonograms;</p> <p>(c) for the producers of the first fixations of films, of the original and copies of their films;</p> <p>(d) for broadcasting organizations, of fixations of their broadcasts, whether these broadcast are transmitted by wire or over the air, including by cable or satellite.</p>	<p>11 In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.</p> <p>14.2 Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.</p> <p>14.3 Broadcasting organizations shall have the right to</p>

			<p>prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).</p> <p>14.4 The provisions of Article 11 in respect of computer programs shall apply mutatis mutandis to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.</p>
11.5 .3		The Parties agree that the rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article.	
Broadcasting and Communication to the public of other subject matter			
11.5 bis1		<p>The Parties shall provide for broadcasting organizations the exclusive right to authorize or prohibit the re-transmission of their broadcasts by wire or over the air, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.</p> <p>The Parties shall provide a right in order to ensure that a single equitable remuneration is paid by the user if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the</p>	<p>11 In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.</p>

	<p>relevant performers and phonogram producers. The Parties may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.</p> <p>(b) distribution, importation for distribution, broadcasting, communication or making available to the public works or other subject matter protected under this Agreement from which electronics rights-management information has been removed or altered without authority. if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights as provided by national legislation.</p>	<p>14.2 Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.</p> <p>14.3 Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).</p> <p>14.4 The provisions of Article 11 in respect of computer programs shall apply mutatis mutandis to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.</p>
11.5 bis2	For the purpose of this Agreement, the expression 'rights management information' means any information provided by right holders which identifies the work or other subject-matter referred to in this Agreement, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.	
11.5 bis3	Paragraph 2, shall apply when any these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Agreement.	
Exceptions and Limitations		
11.	The parties may provide for limitation or exceptions to the	13 Members shall confine limitations or exceptions to

<p>10.1</p>		<p>rights set out in the Article 11.1-11.9 only in certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonable prejudice the legitimate interests of the right holders in accordance with the conventions and international Treaties to which they are Parties.</p>	<p>exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.</p> <p>14.6 Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) [see below] shall also apply, mutatis mutandis, to the rights of performers and producers of phonograms in phonograms.</p> <p>[18 Berne (1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.</p> <p>(2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew.</p> <p>(3) The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle.</p> <p>(4) The preceding provisions shall also apply in the case of new accessions to the Union and to cases in which protection is extended by the application of Article 7 or by the abandonment of reservations.]</p>
<p>11. 10.2</p>		<p>The parties shall provide that temporary acts of reproduction referred to in Article 11.4 <i>bis</i>, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to</p>	

		enable (a) a transmission in a network between third parties by an intermediary, or (b) a lawful use of a work or other subject-matter to be made, and which have no independent economic significance shall be exempted from the reproduction right provided for in Article 5.4 bis [this article is no longer included in the FTA].	
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PATENTS

International Agreements

17.1 (a)	The Parties shall comply with Article 1 through 52 of the Patent Co-operation Treaty (Washington, 1970) ; [The Patent Cooperation Treaty (PCT) is an international patent law treaty, concluded in 1970. It provides a unified procedure for filing patent applications to protect inventions in each of its contracting states. India ratified the PCT in 1998 and currently enforces it, so this provision will change nothing.]	
17.1 (c)	The Parties shall make all reasonable efforts to comply with Articles 1 through 16 of the Patent Law Treaty (Geneva, 2000]	

Supplementary Protection Certificates

17.3 .2	The Parties shall provide for a further period of protection for a product which is protected by a patent and which has been subject to an administrative authorization procedure that period being equal to the period referred to in paragraph 1 second sentence above, reduced by a period of five years.	33 The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.
17.3 .3	Notwithstanding paragraph 2 and the extension for paediatric use of pharmaceutical products, the duration of the further period of protection may not exceed five years. [EU Note: the rational of this provision is to ensure compensation in case of delays in market authorization and this needs to be further explored with the Indian authorities.]	33 The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

General Obligations

21.1	Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to	Both Parties reaffirm their commitments under the TRIPS Agreement and in particular of its Part III, and shall provide	41.1 Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to
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	permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.	for the following complementary measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights. Those measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.	permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.
21.2	Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.	Those measures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.	41.2 Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
21.3	Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.		41.3 Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.
21.4	Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.		41.4 Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.
21.5	It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.		41.5 It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.
Evidence			
23.1	The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to	The Parties shall take such measures as are necessary, in the case of an infringement of an intellectual property right	43.1 The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient

	support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.	committed on a commercial scale, to enable the competent judicial authorities to order, where appropriate and following an application, the communication of banking, financial or commercial documents under the control of the opposing entity, subject to the protection of confidential information.	to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.
23.2	In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.		43.2 In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Measures for Preserving Evidence

24	The judicial authorities shall have the authority to order prompt and effective provisional measures to preserve relevant evidence in regard to the alleged infringement.	The Parties shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by an entity who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. Those measures shall be taken, if necessary without the other party being heard, 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.	50.1 The judicial authorities shall have the authority to order prompt and effective provisional measures: (a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance; (b) to preserve relevant evidence in regard to the alleged infringement.
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Rights of Information

25.1	Members may provide that the judicial authorities shall have	The Parties shall ensure that, in the context of proceedings	47 Members may provide that the judicial authorities shall
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	<p>the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.</p>	<p>concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:</p> <p>a) was found in possession of the infringing goods on a commercial scale; was found to be using the infringing services on a commercial scale.</p> <p>b) was found to be providing on a commercial scale services used in infringing activities; or</p> <p>c) was indicated by the person referred to in point (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services.</p>	<p>have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.</p>
<p>25.2</p>		<p>The information referred to in paragraph 1 shall, as appropriate, comprise:</p> <p>a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;</p> <p>b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question</p>	
<p>25.3</p>		<p>Paragraphs 1 and 2 shall apply without prejudice to other statutory provisions which:</p> <p>a) grant the right holder rights to receive fuller information.</p> <p>b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;</p> <p>c) govern responsibility for misuse of the right of information;</p>	

		<p>d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to his own participation or that of his close relatives in an infringement of an intellectual property right ; or</p> <p>e) govern an opportunity of confidentiality of information sources or the processing of personal data.</p>	
Provisional and Precautionary Measures			
26.1	The judicial authorities shall have the authority to order prompt and effective provisional measures to prevent an infringement of any intellectual property right from occurring and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;	The Parties shall ensure that the judicial authorities may, at the request of the applicant issue an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by domestic law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.	50.1 The judicial authorities shall have the authority to order prompt and effective provisional measures: (a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance; (b) to preserve relevant evidence in regard to the alleged infringement.
26.2	The judicial authorities shall 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.	An interlocutory injunction may also be issued to order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.	50.2 The judicial authorities shall 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.
26.3	The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and 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.	In the case of an infringement committed on a commercial scale, the Parties shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.	50.3 The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and 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.
26.4	Where provisional measures have been adopted inaudita		50.4 Where provisional measures have been adopted inaudita

	altera parte, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.		altera parte, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.
26.5	The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.		50.5 The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.
26.6	Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.		50.6 Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.
26.7	Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.		50.7 Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.
26.8	To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.		50.8 To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.
Corrective Measures			
27	In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be	The Parties shall ensure that the competent judicial authorities may order, at the request of the application and without prejudice to any individual task management	46 In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without

<p>infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, 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. 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.</p>	<p>software damages due to the right holder by reason of the infringement, and without compensation of any sort, the recall, definitive removal from the channels of commerce or destruction of goods that they have found to be infringing an intellectual property right. If appropriate, the competent judicial authorities may also order destruction of materials and implements principally used in the creation or manufacture of those goods.</p> <p>The judicial authorities shall order that those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.</p>	<p>compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, 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. 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.</p>
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Injunctions

<p>28.1</p>	<p>The judicial authorities shall have the authority to order a party to desist from an infringement, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.</p>	<p>The Parties shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Where provided for by domestic law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. The Parties shall also ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.</p>	<p>44.1 The judicial authorities shall have the authority to order a party to desist from an infringement, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.</p>
<p>28.2</p>	<p>Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies</p>		<p>44.2 Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies</p>

	are inconsistent with a Member’s law, declaratory judgments and adequate compensation shall be available.		are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.
Alternative Measures			
29	The Parties may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 27 ‘corrective measures’ and/or Article 28 ‘injunctions’, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 27 “corrective measures” and/or Article 28 “injunctions” if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory		
Damages			
30.1	The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person’s intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.	The Parties shall ensure that when the judicial authorities set the damages: a) they shall 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 (a) they 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 authorisation to use the intellectual property right in question.	45.1 The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.
30.2	The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney’s fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.	Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the Parties may lay down that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.	45.2 The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.
Publication of Judicial Decisions			
32	The Parties may endeavour to ensure that, in legal proceedings instituted for infringement of anti-intellectual	The Parties shall ensure that, in legal proceedings instituted for infringement of anti-intellectual property right, the	

	property right, the judicial pronouncement are available in the public domain.	judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part. The Parties may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.	
Liability of Intermediate Service Providers			
Use of Intermediaries' services			
35.1		Both Parties recognise 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 intellectual property rights in the digital environment, each Party shall provide for the following measures for intermediary service providers where they are in no way involved with the information transmitted.	
Liability of Intermediary Service Providers: "Mere Conduit"			
35.2 .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, Parties shall ensure that the service provider is not liable for the information transmitted, on condition that the provider: <ul style="list-style-type: none"> 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 	
35.2 .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 this 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.	
35.2 .3		This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.	
Liability of Intermediary service providers: "Caching"			
01/0 3/35		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, 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: <ul style="list-style-type: none"> a) the provider does not modify the information; b) the provider complies with conditions on access to the information; c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognized recognised and used by industry; d) the provider 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) the provider 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 court or an administrative authority has ordered such removal or disablement. 	
02/0 3/35		This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.	
Liability of Intermediary Service Providers: Hosting			
35.4		Where an information society service is provided that	

.1		<p>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:</p> <p>a) the provider 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</p> <p>b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.</p>	
35.4 .2		<p>Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.</p>	
35.4 .3		<p>This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for the Parties of establishing procedures governing the removal or disabling of access to information.</p>	
No General Obligation to Monitor			
35.5 .1		<p>The Parties shall not impose a general obligation on providers, when providing the services covered by Articles 26.2, 26.3 and 26.4, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.</p>	
35.5 .2		<p>The Parties may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.</p>	

Codes of Conduct		
37.1		<p>Parties shall encourage:</p> <p>a) the development by trade or professional associations or organizations of codes of conduct aimed at contributing towards the enforcement of intellectual property rights, particularly by recommending the use on optical discs of a code enabling the identification of the origin of their manufacture;</p> <p>b) the submission to the competent authorities of the Parties of draft codes of conduct and of any evaluations of the application of these codes of conduct.</p>
Co-operation		
38.1		<p>The Parties agree to co-operate with a view to supporting implementation of the commitments and obligations undertaken under this Chapter.</p>
38.2	<p>The Parties agree to cooperate in the areas of capacity building, human resource development and awareness generation in the field of intellectual property rights.</p>	
38.3	<p>Subject to the provisions of Article [X, horizontal art. On assistance/co-operation issues] of this Agreement, areas of co-operation include, the following activities:</p> <p>a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement; exchange of experiences in the European Community and the Republic of India on legislative progress;</p> <p>b) exchange of experiences in the European Community and the Republic of India on enforcement of intellectual property rights;</p> <p>c) capacity-building exchange and training of personnel;</p> <p>d) promotion and dissemination of information on intellectual property rights in, inter alia, business circles and civil society; public awareness of consumers and right holders;</p> <p>e) enhancement of institutional co-operation, including</p>	<p>69 Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.</p>

between intellectual property offices.]		
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