

SECTION 1: GENERAL OBLIGATIONS—Article 41

1. Members **shall ensure that enforcement procedures as specified in this Part are available** under their law **so as to 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.
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**.
3. [Provision requiring decisions on the merits to preferably be in writing, reasoned, and available].
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.
5. It is understood that this Part **does not create any obligation to put in place a judicial system for the enforcement of [IP] 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.

Article 44 Injunctions

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.

SECTION 3: PROVISIONAL MEASURES—Article 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.
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.
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.
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.

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.
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.
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.
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.

SECTION 5: CRIMINAL PROCEDURES—Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. **Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights**, in particular where they are committed willfully and on a commercial scale.

SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES

Article 51 Suspension of Release by Customs Authorities

Members shall, in conformity with the provisions set out below, **adopt procedures** [fn omitted] **to enable a right holder**, who has valid grounds for **suspecting that the importation of counterfeit trademark or pirated copyright goods** [fn omitted] **may take place, to lodge an application** in writing with competent authorities, administrative or judicial, **for the suspension by the customs authorities of the release into free circulation of such goods.**

Members may enable such an application to be made in respect of goods which involve **other infringements of intellectual property rights**, provided that the requirements of this Section are met. **Members may also provide for corresponding procedures** concerning the suspension by the customs authorities of the release of infringing goods destined **for exportation** from their territories.