

## TPP-ACTA Comparison Table, v. 2.0

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### General Provisions

| TPP   | TRIPS   | ACTA   | Chile FTA  | Comparison/Analysis  |
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| <p>Art. 1.2: Further to Article 1, the Parties affirm their existing rights and obligations with respect to each other under the TRIPS Agreement.</p> <p>3. Each Party shall ratify or accede to the following agreements by the date of entry into force of this Agreement:</p> <p>(a) Patent Cooperation Treaty (1970), as amended in 1979;</p> <p>(b) Paris Convention for the Protection of Industrial Property (1967);</p> <p>(c) Berne Convention for the Protection of Literary and Artistic Works (1971);</p> <p>(d) Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);</p> <p>(e) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989);</p> <p>(f) Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), as amended in 1980;</p> <p>(g) International Convention for the Protection of New Varieties of Plants (1991) (UPOV Convention);</p> <p>(h) Singapore Treaty on the Law of</p> | <p>Art. 2. Intellectual Property Conventions.</p> <p>1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).</p> <p>2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.</p> | <p>Art. 1: Nothing in this Agreement shall derogate from any obligation of a Party with respect to any other Party under existing agreements, including the TRIPS Agreement.</p> | <p>Arts. 17.1.2 – 17.1.5</p> <p>2. Before January 1, 2007, each Party shall ratify or accede to the Patent Cooperation Treaty (1984).</p> <p>3. Before January 1, 2009, each Party shall ratify or accede to:</p> <p>(a) the International Convention for the Protection of New Varieties of Plants (1991);</p> <p>(b) the Trademark Law Treaty (1994); and</p> <p>(c) the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974).</p> <p>4. Each Party shall undertake reasonable efforts to ratify or accede to the following agreements in a manner consistent with its domestic law:</p> <p>(a) the Patent Law Treaty (2000);</p> <p>(b) the Hague Agreement Concerning the International Registration of Industrial Designs (1999); and</p> <p>(c) the Protocol Relating to the Madrid Agreement</p> | <p>- TRIPS demands compliance with certain Paris Convention provisions and avoids interfering with Paris, Berne, Rome and the Treaty on Intellectual Property in Respect of Integrated Circuits.</p> <p>-ACTA merely avoids interfering with other agreements, while TPP requires countries to join in to a long list of treaties, conventions, and protocols.</p> <p>-Chile FTA closely resembles TPP. In addition to prohibiting derogation from the obligations and rights under TRIPS or multilateral agreements, Chile FTA further requires each Party to ratify or accede to a long list of treaties, conventions, and protocols. TPP and Chile FTA both require Parties to ratify or accede to Patent Cooperation Treaty, Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. However, unlike TPP, Chile FTA requires each Party to ratify or accede to the International Convention for the Protection of New Varieties of Plants, the</p> |

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| <p>Trademarks (2006);<br/>(i) WIPO Copyright Treaty (1996); and<br/>(j) WIPO Performances and Phonograms Treaty (1996).<br/>4. Each Party shall notify the WTO of its acceptance of the Protocol amending the TRIPS Agreement done at Geneva on December 6, 2005.<br/>5. Each Party shall make all reasonable efforts ratify or accede to the following agreements by the date of entry into force of the Agreement:<br/>(a) Patent Law Treaty (2000); and<br/>(b) Hague Agreement Concerning the International Registration of Industrial Designs (1999).</p>  |  |  | <p>Concerning the International Registration of Marks (1989).<br/>5. Nothing in this Chapter concerning intellectual property rights shall derogate from the obligations and rights of one Party with respect to the other by virtue of the TRIPS Agreement or multilateral intellectual property agreements concluded or administered under the auspices of the World Intellectual Property Organization (WIPO).</p>  | <p>Trademark Law Treaty, the Patent Law Treaty, and the Hague Agreement Concerning the International Registration of Industrial Designs. Furthermore, unlike TPP which lists the agreements under WIPO to be ratified or acceded to by the Parties, Chile FTA simply notes that “[n]othing in this Chapter . . . shall derogate from the obligations and rights of one Party with respect to the other by virtue of . . . intellectual property agreements concluded or administered under the auspices of WIPO.”</p>   |
| <p>Art. 1.13: Further to Article ____ (Publication), and with the object of making the protection and enforcement of intellectual property rights transparent, each Party shall ensure that all laws, regulations, and publicly available procedures concerning the protection or enforcement of intellectual property rights are in writing and are published,<sup>3</sup> or where publication is not practicable, made publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them.</p> <p><sup>3</sup> A Party may satisfy requirement for publication by making the law, regulation, or procedure available to the public on the Internet.</p> | <p>Art. 63: Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.</p> | <p>Art. 30: To promote transparency in the administration of its intellectual property rights enforcement system, each Party shall take appropriate measures, pursuant to its law and policies, to publish or otherwise make available to the public information on:<br/>(a) procedures available under its law for enforcing intellectual property rights, its competent authorities responsible for such enforcement, and contact points available for assistance;<br/>(b) relevant laws, regulations, final judicial decisions, and administrative rulings of general application pertaining to the enforcement of intellectual property rights; and<br/>(c) its efforts to ensure an effective system of enforcement and protection of intellectual property rights.</p> | <p>Art. 17.1.12 Each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights, and all final judicial decisions and administrative rulings of general applicability pertaining to the enforcement of such rights, shall be in writing and shall be published,<sup>2</sup> or where such publication is not practicable, made publicly available, in a national language in such a manner as to enable the other Party and right holders to become acquainted with them, with the object of making the protection and enforcement of intellectual property rights transparent. Nothing in this paragraph shall require a Party to disclose confidential information the disclosure of</p> | <p>-In addition to domestic laws and regulations, TRIPS also requires publication of “Agreements . . . which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member. . .”.</p> <p>-TPP and ACTA are essentially identical, although TPP explicitly mentions internet publication as an option.</p> <p>-Chile FTA mirrors TPP art. 1.13 and also mirrors the language of TPP art. 11.1 and TPP footnotes 3 and 16. However, the Chile FTA provision does not contain the TPP art. 11.1 requirement of stating “any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based.” On the other hand, the TPP provisions lack the Chile FTA art. 17.1.2’s goal of “making the protection and</p> |

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|  |   |  | <p>which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.</p> <p><sup>2</sup> The requirement for publication is satisfied by making the written document available to the public via the Internet.</p>   | enforcement of intellectual property rights transparent.”   |
| Art. 10.1 The Parties understand that a decision that a Party makes on the distribution of enforcement resources shall not excuse that Party from complying with this Chapter.   | Art. 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. | Art. 2.2: Nothing in this Agreement creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and enforcement of law in general. | 17.11.2 2. This Article does not create any obligation: (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that already existing for the enforcement of law in general, or (b) with respect to the distribution of resources for the enforcement of intellectual property rights and the enforcement of law in general. The distribution of resources for the enforcement of intellectual property rights shall not excuse a Party from compliance with the provisions of this Article. | <p>-ACTA, TPP, and TRIPS all give their signatories autonomy to allocate enforcement resources, but TPP focuses on that autonomy not excusing noncompliance while the others focus on the autonomy itself.</p> <p>-Chile FTA combines ACTA, TPP, and TRIPS provisions.</p>  |
| Art. 10.2: 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 name is indicated in the usual manner as the author, producer, performer, or publisher of the work, performance, or phonogram is the designated right holder in such work, performance, or phonogram. Each Party shall | <p>Art. 9.1: Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto.</p> <p>Berne Art. 15.2: The person or body corporate whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.</p>   | N/A  | Art. 17.11.6: In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide that: (a) the natural person or legal entity whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram in the usual manner, <sup>27</sup> shall, in the absence of proof to the contrary, be  | <p>- ACTA does not have an equivalent section. Neither does TRIPS, however, TRIPS requires compliance with the Berne Convention Art. 15, which requires the presumption of authorship. The other presumptions are not in TRIPS or Berne.</p> <p>The US-Chile FTA requires a presumption of authorship and a presumption of copyright, but no presumption of a valid patent or</p> |

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| <p>also provide for a presumption that, in the absence of proof to the contrary, the copyright or related right subsists in such subject matter. 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.</p>   |  |   | <p>presumed to be the designated right holder in such work, performance, or phonogram. (b) it shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter. A Party may require, as a condition for according such presumption of subsistence, that the work appear on its face to be original and that it bear a publication date not more than 70 years prior to the date of the alleged infringement.</p>   | <p>trademark.</p>  |
| <p>Art. 11.1: Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights shall be in writing and shall state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based. Each Party shall also provide that such decisions and rulings shall be published<sup>16</sup> 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.</p> <p><sup>16</sup> A Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.</p> | <p>Art. 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.</p> <p>Art. 63: [F]inal judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them.</p> | <p>Art. 30: To promote transparency in the administration of its intellectual property rights enforcement system, each Party shall take appropriate measures, pursuant to its law and policies, to publish or otherwise make available to the public information on: ...</p> <p>(b) relevant laws, regulations, final judicial decisions, and administrative rulings of general application pertaining to the enforcement of intellectual property rights</p> | <p>Art. 17.1.12 Each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights, and all final judicial decisions and administrative rulings of general applicability pertaining to the enforcement of such rights, shall be in writing and shall be published,<sup>2</sup> or where such publication is not practicable, made publicly available, in a national language in such a manner as to enable the other Party and right holders to become acquainted with them, with the object of making the protection and enforcement of intellectual property rights transparent. Nothing in this paragraph shall require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be</p> | <p>-Both TRIPS and TPP call for decisions to include the reasoning behind them</p> <p>-Both ACTA and TPP require rulings to be made available to the public. Only TPP gives requirements for the form and content of decisions and rulings.</p> <p>-Chile FTA mirrors TPP art. 1.13 and also mirrors the language of TPP art. 11.1 and TPP footnotes 3 and 16. However, the Chile FTA provision does not contain the TPP art. 11.1 requirement of stating “any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based.” On the other hand, the TPP provisions lack the Chile FTA art. 17.1.2’s goal of “making the protection and enforcement of intellectual property rights transparent.”</p> |

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|  |  |  | <p>contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.</p> <p><sup>2</sup> The requirement for publication is satisfied by making the written document available to the public via the Internet.</p>   |  |
| Art. 11.2: Each Party shall promote the collection and analysis of statistical data and other relevant information concerning intellectual property rights infringements as well as the collection of information on best practices to prevent and combat infringements.                               | N/A  | Art. 28.2: Each Party shall promote the collection and analysis of statistical data and other relevant information concerning intellectual property rights infringements as well as the collection of information on best practices to prevent and combat infringements.   | -Chile FTA does not contain a provision equivalent to TPP art. 11.2 or ACTA art. 28.2.  | -TPP and ACTA are identical. May divert scarce analysis resources toward purposes that are less serving of a country's needs.  |
| 11.3 Each Party shall publicize information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal systems, including statistical information that the Party collects for such purposes.  | N/A  | Art. 30: To promote transparency in the administration of its intellectual property rights enforcement system, each Party shall take appropriate measures, pursuant to its law and policies, to publish or otherwise make available to the public information on: ...<br>(c) its efforts to ensure an effective system of enforcement and protection of intellectual property rights.                                      | Art. 17.11.4 Each Party shall publicize or make available to the public information that each Party might collect regarding its efforts to provide effective enforcement of intellectual property rights, including statistical information.  | <p>-TPP and ACTA provisions are essentially identical, except TPP explicitly names "statistical information that the Party collects for such purposes" to be within the purview of the type of information to be made available to the public.</p> <p>-Chile FTA provision is essentially identical to TPP and ACTA provisions.</p>  |
| Art. 11.4 Nothing in this Chapter shall require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private. | Art. 39: 1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.<br>2. Natural and legal persons | Art. 4.1 Nothing in this Agreement shall require a Party to disclose:<br>(a) information, the disclosure of which would be contrary to its law, including laws protecting privacy rights, or international agreements to which it is party;<br>(b) confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest; or<br>(c) confidential information, the | Art. 17.1.12 Each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights, and all final judicial decisions and administrative rulings of general applicability pertaining to the enforcement of such rights, shall be in writing and shall be | <p>- TRIPS Art. 64 is nearly identical to TPP, but TRIPS also includes the extra protections in Art. 39.</p> <p>-TPP provision is very similar to ACTA, except ACTA further prohibits the disclosure of "information, the disclosure of which would be contrary to its law, including laws protecting privacy rights, or international agreements to which it is party."</p> |

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|  | <p>shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:</p> <p>(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;</p> <p>(b) has commercial value because it is secret; and</p> <p>(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.</p> <p>3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.</p> <p>Art. 63.4: Nothing in paragraphs [on transparency] shall require Members to disclose confidential information which would impede law enforcement</p> | disclosure of which would prejudice the legitimate commercial interests of particular enterprises, public or private. | <p>published,<sup>2</sup> or where such publication is not practicable, made publicly available, in a national language in such a manner as to enable the other Party and right holders to become acquainted with them, with the object of making the protection and enforcement of intellectual property rights transparent. Nothing in this paragraph shall require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.</p> <p><sup>2</sup> The requirement for publication is satisfied by making the written document available to the public via the Internet.</p> | <p>-The last sentence of Chile FTA art. 17.1.12 is identical to TPP art. 11.4. Therefore, unlike ACTA, Chile FTA art. 17.1.12 does not contain the provision that further prohibits the disclosure of “information, the disclosure of which would be contrary to its law, including laws protecting privacy rights, or international agreements to which it is party.”</p> |
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|  | or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private. |  |  |  |
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## Scope

| TPP  | TRIPS  | ACTA   | Chile FTA   | Comparison/Analysis   |
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| Art. 1.6: 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.  | Art. 1. Nature and Scope of Obligations<br>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. | Art. 2.1: Each Party shall give effect to the provisions of this Agreement. A Party may implement in its law more extensive enforcement of intellectual property rights than is required by this Agreement, provided that such enforcement does not contravene the provisions of this Agreement. Each Party shall be free to determine the appropriate method of implementing the provisions of this Agreement within its own legal system and practice. | Art. 17.1.1 Each Party shall give effect to the provisions of this Chapter and may, but shall not be obliged to, implement in its domestic law more extensive protection than is required by this Chapter, provided that such protection does not contravene the provisions of this Chapter.  | -TPP, TRIPS, and ACTA are essentially identical, though ACTA and TRIPS give some additional deference to the sovereignty of its signatories.<br><br>-Chile FTA provision is essentially identical to TPP and ACTA. However, Chile FTA provision is more precisely worded to clarify that each Party “may, but shall not be obliged to, implement . . . more extensive protection than is required by this Chapter.” |
| Art. 1.7: In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of the other Parties treatment no less favorable than it accords to its own nationals with regard to the protection and enjoyment of such intellectual property rights and any benefits derived from such rights.<br>8. A Party may derogate from paragraph [7] in relation to its judicial and administrative | Art. 3. National Treatment<br>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 <sup>1</sup> 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  | N/A  | Arts. 17.1.6–17.1.8<br>6. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to persons of the other Party treatment no less favorable than it accords to its own persons with regard to the protection <sup>1</sup> and enjoyment of such intellectual property rights and any benefits derived from such rights. With respect to secondary uses of phonograms | - TRIPS includes more details than TPP regarding exceptions to IP provision in Paris, Berne, and Rome.<br><br>-ACTA does not have an equivalent section.<br><br>-Although Chile FTA arts. 17.1.6-17.1.8 closely follow TPP arts. 1.7-1.9 there are some differences. First, unlike TPP art. 1.7, Chile FTA art. 17.1.6 further notes that “With respect to secondary uses of  |

<sup>1</sup> For the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.

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| <p>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:</p> <p>(a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and</p> <p>(b) not applied in a manner that would constitute a disguised restriction on trade.</p> <p>9. Paragraph [7] does not apply to procedures provided in multilateral agreements to which any Party is a party and which were concluded under the auspices of the World Intellectual Property Organization (WIPO) in relation to the acquisition or maintenance of intellectual property rights.</p> | <p>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.</p> |  | <p>by means of analog communications and free over-the-air radio broadcasting, however, a Party may limit the rights of the performers and producers of the other Party to the rights its persons are accorded within the jurisdiction of the other Party.</p> <p>7. Each Party may derogate from paragraph 6 in relation to its judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of that Party, only where such derogations are necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Chapter and where such practices are not applied in a manner that would constitute a disguised restriction on trade.</p> <p>8. Paragraphs 6 and 7 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.</p> | <p>phonograms by means of analog communications and free over-the-air radio broadcasting, however, a Party may limit the rights of the performers and producers of the other Party to the rights its persons are accorded within the jurisdiction of the other Party.” Second, TPP art. 1.8 is essentially identical to Chile FTA art. 17.1.7. Lastly, unlike TPP art. 1.9 which, precludes the application of the “national treatment” provision of TPP art. 1.7 to WIPO procedures, Chile FTA art. 17.1.8 precludes the application of the “national treatment” provision of Chile FTA art. 17.1.6 as well as the application of “judicial and administrative procedures” of Chile FTA art. 17.1.7 to WIPO procedures.</p> |
| <p>Art. 1.10: Except as it otherwise provides, including in Article ____ (Berne 18/TRIPS 14.6), this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement 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</p>   | <p>Art 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>Art. 70: 1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement</p>  | <p>Art. 2.1: Each Party shall give effect to the provisions of this Agreement.</p> <p>Art. 5: (h) intellectual property refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement</p> | <p>Art. 17.1.10 Except as otherwise provided for in this Chapter, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement, and which is protected by a Party on that date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Chapter. In</p>  | <p>-TPP 1.10 &amp; 1.12 and TRIPS 70.1-2 are essentially identical, but TRIPS then adds a significant number of exceptions that are not present in TPP.</p> <p>-Although likely functionally the same, TPP is explicitly applied to all existing protected intellectual property, while ACTA simply refers to “property that are the subject to Sections 1 through 7 of Part II of the</p>   |



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| <p>Chapter.</p> <p>1.12. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.</p> | <p>for the Member in question.</p> <p>2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.</p> <p>4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after</p> |  | <p>respect of paragraphs 10 and 11, copyright and related rights obligations with respect to existing works and phonograms shall be determined solely under Article 17.7(7).</p> | <p>TRIPS Agreement.”</p> <p>-The first sentence of Chile FTA art. 17.1.10 and TPP art. 1.10 are essentially identical. However, the former further adds that existing protected subject matter and subject matter that has fallen into public domain in its territory shall be determined solely under Chile FTA art. 17.7(7), which states “Each Party shall apply Article 18 of the Berne Convention, mutatis mutandis, to all the protections of copyright and related rights and effective technological measures and rights management information in Articles 17.5, 17.6, and 17.7.”</p> |
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|  | <p>the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.</p> <p>5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.</p> <p>6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.</p> <p>7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.</p> <p>8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its</p> |  |  |  |
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|  | <p>obligations under Article 27, that Member shall:</p> <p>(a) notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed;</p> <p>(b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and</p> <p>(c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).</p> <p>9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO</p> |  |  |  |
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|   | Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.                                     |  |  |   |
| Art. 1.11: Except as otherwise provided in this Chapter, including Article ____ (Berne 18/TRIPS 14.6), a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its territory. | Art. 70.3: There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain. | Art. 3.2: This Agreement does not create any obligation on a Party to apply measures where a right in intellectual property is not protected under its laws and regulations. | Art. 17.1.11 Neither Party shall be obligated to restore protection to subject matter which on the date of entry into force of this Chapter has fallen into the public domain in that Party. | -TPP, TRIPS, and ACTA do not require a country to restore copyright protection to a work that is in the public domain in that country.<br><br>-Chile FTA provision is essentially identical to TPP art. 1.11 and is functionally equivalent to ACTA art. 3.2. |

### Special Measures Relating to Enforcement in the Digital Environment

| TPP   | TRIPS  | ACTA   | Chile FTA  | Comparison/Analysis  |
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| Art. 3.1: In order to address the problem of trademark cyber-piracy, each Party shall require that the management of its country-code top-level domain (ccTLD) provide an appropriate procedure for the settlement of disputes, based on the principles established in the Uniform Domain-Name Dispute-Resolution Policy. | N/A  | N/A  | Art. 17.3.1 Each Party shall require that the management of its country-code top level domain (ccTLD) provide an appropriate procedure for the settlement of disputes, based on the principles established in the Uniform Domain-Name Dispute-Resolution Policy (UDRP), in order to address the problem of trademark cyber-piracy. | - ACTA and TRIPS do not have an equivalent section.<br><br>-Chile FTA art. 17.3.1 and TPP art. 3.1 are functionally equivalent. However, unlike the Chile FTA provision, the TPP provision specifically provides that the existence of this provision is “to address the problem of trademark cyber-piracy.” |
| Art. 3.2: Each Party shall require that the management of its ccTLD provide online public access to a reliable and accurate database of contact information concerning domain-name registrants.   | N/A  | N/A  | Art. 17.3.2 Each Party shall, in addition, require that the management of its respective ccTLD provide online public access to a reliable and accurate database of contact information for domain-name registrants, in accordance with each Party’s law regarding protection of personal data.                                     | - ACTA and TRIPS do not have an equivalent section.<br><br>-Chile FTA art. 17.3.2 is essentially identical to TPP art. 3.2, except the former qualifies the requirements of the provision to be “in accordance with each Party’s law regarding protection of personal data.”                                 |
| Art. 16.1: Each Party shall ensure that enforcement procedures, to the  | Art. 41.1: Members shall ensure that enforcement procedures as | Art. 27.1: Each Party shall ensure that enforcement procedures, to | Chile FTA does not have an equivalent section.   | - TRIPS has no special requirements for digital enforcement as compared  |

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| <p>extent set forth in the civil and criminal enforcement sections of this Chapter, are available under its law so as to permit effective action against an act of trademark, copyright or related rights infringement which takes place in the digital environment, including expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringement.</p> | <p>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.</p> | <p>the extent set forth in Sections 2 (Civil Enforcement) and 4 (Criminal Enforcement), are available under its law so as to permit effective action against an act of infringement of intellectual property rights which takes place in the digital environment, including expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringements.</p> |   | <p>to regular enforcement.</p> <p>-TPP specifically deals with “act of trademark, copyright or related rights infringement” while ACTA deals with “act of infringement of intellectual property rights”. Otherwise, the two provisions are essentially identical.</p>  |
| <p>Art. 16.3(a): [E]ach Party shall provide, consistent with the framework set out in this Article: (a) legal incentives for service providers to cooperate with copyright owners in deterring the unauthorized storage and transmission of copyrighted materials; and</p>   | <p>N/A</p>   | <p>Art. 27.3: Each Party shall endeavour to promote cooperative efforts within the business community to effectively address trademark and copyright or related rights infringement while preserving legitimate competition and, consistent with that Party’s law, preserving fundamental principles such as freedom of expression, fair process, and privacy.</p>                               | <p>Art. 17.11.23(a) For the purpose of providing enforcement procedures that permit effective action against any act of infringement of copyright<sup>35</sup> covered under this Chapter, including expeditious remedies to prevent infringements and criminal and civil remedies, each Party shall provide, consistent with the framework set forth in this Article: (i) legal incentives for service providers to cooperate with copyright owners in deterring the unauthorized storage and transmission of copyrighted materials; and</p> | <p>-TPP specifically deals with cooperation between “service providers” and “copyright owners” while ACTA deals with “cooperative efforts within the business community”.</p> <p>-Chile FTA art. 17.11.23(a) more closely mirrors TPP art. 16.3(a) than ACTA art. 27.3, insofar as that the subsections of the respective provisions are identical. However, Chile FTA art. 17.11.23 contains a more specific description of the purpose of the provision.</p> |
| <p>Art. 16.3(b)(v): With respect to functions referred to in clauses (i)(C) and (D) [safe harbor for content providers], the limitations shall be conditioned on the service provider:<br/>...<br/>(B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of</p>   | <p>N/A</p>   | <p>N/A</p>   | <p>Art. 17.11.23(c) With respect to functions (b)(iii) and (iv), the limitations shall be conditioned on the service provider:<br/>...<br/>(ii) expeditiously removing or disabling access to the material residing on its system or network upon obtaining actual knowledge of the</p>   | <p>-ACTA does not have an equivalent section. See entries on Side Letter 1, below.</p> <p>-TPP and Chile FTA contain identical provisions.</p>   |

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| the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with clause (ix); and (C) publicly designating a representative to receive such notifications.  |     |     | infringement or becoming aware of facts or circumstances from which the infringement was apparent, including through effective notifications of claimed infringement in accordance with subparagraph (f); and (iii) publicly designating a representative to receive such notifications.   |   |
| Art. 16.3(b)(ix): For purposes of the notice and take down process for the functions referred to in clauses (i)(C) and (D), each Party shall establish appropriate procedures in its law or in regulations for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counternotification that causes injury to any interested party as a result of a service provider relying on the misrepresentation. | N/A | N/A | Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically <sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall | <p>-ACTA does not have an equivalent section. See entries on Side Letter 1, below.</p> <p>-TPP provision closely mirrors the Chile FTA provision. However, the Chile FTA provision contains safeguard measures which are reflected in Side Letter 1, discussed further below.</p> |

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|   |     |     | require that an effective counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.  |   |
| Art. 16.3(b) (x) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the person giving the original effective notification seeks judicial relief within a reasonable time. | N/A | N/A | Art. 17.11.23(g) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, it shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the supplier of the material that it has done so and, if the supplier makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the original notifying party seeks judicial relief within a reasonable time. | <p>-ACTA does not have an equivalent section. See entries on Side Letter 1, below.</p> <p>-The TPP provision and the Chile FTA provision are identical.</p> |

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| Art. 16.3(b)(xi) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.  | N/A | Art. 27.4 A Party may provide, in accordance with its laws and regulations, its competent authorities with the authority to order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, where that right holder has filed a legally sufficient claim of trademark or copyright or related rights infringement, and where such information is being sought for the purpose of protecting or enforcing those rights. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy. | Art. 17.11.23(h) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.  | <p>-TPP lacks ACTA's requirements that: (i) there be a sufficient claim of infringement; (ii) the information be sought for the purpose of protecting or enforcing a copyright; and (iii) the procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity.</p> <p>-TPP and Chile FTA contain identical provisions.</p> |
| Side letter 1: In meeting the obligations of Article 16.3(ix), the United States shall apply the pertinent provisions of its law <sup>31</sup> and [x Party] shall adopt requirements for: (a) effective written notice to service providers with respect to materials that are claimed to be infringing, and (b) effective written counter-notification by those whose material is removed or disabled and who claim that it was disabled through mistake or misidentification, as set forth in this letter. Effective written notice means notice that substantially complies with the elements listed in section (a) of this letter, and effective written counter-notification means counter- | N/A | N/A  | Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically <sup>38</sup> signed by a person who represents, under | <p>-TPP contains detailed notification and counter-notification procedures for rightholders, ISPs and subscribers. ACTA does not have an equivalent section.</p> <p>-The procedures set out under the Chile FTA closely resemble the procedures under TPP. Both provisions require written effective notification and counter-notification procedures.</p>         |



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| notification that substantially complies with the elements listed in section (b) of this letter.   |     |     | penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation. |   |
| Side letter 1 (a) Effective Written Notice, by a Copyright Owner or Person Authorized to Act on Behalf of an Owner of an Exclusive Right, to a Service Provider's Publicly Designated Representative<br>In order for a notice to a service provider to comply with the relevant requirements set out in Article 16.3(ix), that notice must be a written communication, which | N/A | N/A | Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications   | -ACTA does not have an equivalent section. However, the DMCA contains similar requirements: (c)(3) ELEMENTS OF NOTIFICATION.—<br>(A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially |

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| <p>may be provided electronically, that includes substantially the following:</p> <p>1. the identity, address, telephone number, and electronic mail address of the complaining party (or its authorized agent);</p> |  |  | <p>by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically<sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.</p> | <p>the following: ...</p> <p>(iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.</p> <p>-The Chile FTA provision closely resembles the TPP provision. Both provisions require that notice be in written communication, physically or electronically. However, the TPP provision further requires that the communication substantially include the identity, address, telephone number, and email address of the complaining party or its authorized agent.</p> |
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| Side letter 1 (a) 2. information reasonably sufficient to enable the service provider to identify the copyrighted work(s) claimed to have been infringed; | N/A | N/A | <p>Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically<sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also</p> | <p>-ACTA does not have an equivalent section. However, the DMCA contains similar requirements: (c)(3)(A)(ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.</p> <p>-The TPP provision is essentially identical to the Chile FTA provision.</p> |
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|  |     |     | provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.  |  |
| Side letter 1 (a) 3. information reasonably sufficient to permit the service provider to identify and locate the material residing on a system or network controlled or operated by it or for it that is claimed to be infringing, or to be the subject of infringing activity, and that is to be removed, or access to which is to be disabled; | N/A | N/A | Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically <sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective | <p>-ACTA does not have an equivalent section. However, the DMCA contains similar requirements: (c)(3)(A)(iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.</p> <p>-Both TPP and Chile FTA provisions require information reasonably sufficient to identify and locate the infringing material.</p> |

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|   |     |     | counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.  |  |
| Side letter 1 (a) 4. a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; | N/A | N/A | Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically <sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been | <p>-ACTA does not have an equivalent section. However, the DMCA contains similar requirements: (c)(3)(A)(v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.</p> <p>-Both TPP and Chile FTA provisions require a written statement that the claimant has a “good faith” belief that the material at issue is infringing.</p> |

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|  |     |     | <p>infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.</p> |  |
| Side letter 1 (a) 5. a statement that the information in the notice is accurate; | N/A | N/A | <p>Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective</p>  | <p>-ACTA does not have an equivalent section. However, the DMCA contains similar requirements: (c)(3)(A) (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.</p> <p>-Although the Chile FTA provision does not explicitly require a statement that the information in the notice is accurate, it requires the notice to be signed, “under penalty</p> |

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|  |  |  | <p>notification of claimed infringement be a written communication, physically or electronically<sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.</p> | <p>of perjury . . .”.</p> |
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| Side letter 1 (a) 6. a statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the complaining party is the holder of an exclusive right that is allegedly infringed, or is authorized to act on the owner's behalf; and | N/A | N/A | <p>Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically<sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also</p> | <p>-ACTA does not have an equivalent section. However, the DMCA contains similar requirements: (c)(3)(A) (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.</p> <p>-TPP provision closely mirrors the Chile FTA provision. However, while the former lists "statement under penalty of perjury or equivalent legal sanction" merely as an example of "sufficient indicia of reliability", the latter lists "under penalty of perjury or other criminal penalty" and a mandatory standard. Furthermore, while TPP allows the right holder as well as the holder's agent to submit the statement, the Chile FTA explicitly mentions only the authorized agent in its provision.</p> |
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|   |     |     | provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.  |   |
| Side letter 1 (a) 7. the signature of the person giving notice. | N/A | N/A | Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically <sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective | <p>-ACTA does not have an equivalent section. However, the DMCA contains similar requirements: (c)(3)(A) (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.</p> <p>-Both TPP and the Chile FTA require the signature of the person giving notice.</p> |

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|  |     |     | counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.  |   |
| <p>Side letter 1 (b) Effective Written Counter-Notification by a Subscriber Whose Material Was Removed or Disabled as a Result of Mistake or Misidentification of Material</p> <p>In order for a counter-notification to a service provider to comply with the relevant requirements set out in Article 16.3(ix), that counter-notification must be a written communication, which may be provided electronically, that includes substantially the following:</p> <p>1. the identity, address, and telephone number of the subscriber;</p> | N/A | N/A | <p>Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically<sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been</p> | <p>-ACTA does not have an equivalent section. However, the DMCA contains similar requirements: (g)(3) CONTENTS OF COUNTER NOTIFICATION.—To be effective under this subsection, a counter notification must be a written communication provided to the service provider’s designated agent that includes substantially the following: ...</p> <p>(D) The subscriber’s name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber’s address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.</p> |

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|  |     |     | <p>infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.</p> | <p>-Both TPP and Chile FTA provisions require counter-notifications to be in a written communication, physically or electronically. However, similar to its provision on notification procedures, the TPP provision on counter-notification contains more detail on the required information to be provided, than its counterpart in the Chile FTA.</p>                    |
| Side letter 1 (b)2. the identity of the material that has been removed or to which access has been disabled; | N/A | N/A | <p>Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective</p>  | <p>-ACTA does not have an equivalent section. However, the DMCA contains similar requirements: (g)(3)(B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.</p> <p>-TPP and Chile FTA provisions are functionally the same.</p> |

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|  |  |  | <p>notification of claimed infringement be a written communication, physically or electronically<sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.</p> |  |
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| Side letter 1 (b)3. the location at which the material appeared before it was removed or access to it was disabled; | N/A | N/A | <p>Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically<sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also</p> | <p>-ACTA does not have an equivalent section. However, the DMCA contains similar requirements: (g)(3)(B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.</p> <p>-TPP and Chile FTA provisions are functionally the same.</p> |
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|  |     |     | provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.  |   |
| Side letter 1 (b)4. a statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material; | N/A | N/A | Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically <sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective | -ACTA does not have an equivalent section. However, the DMCA contains similar requirements: (g)(3)(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.<br><br>-TPP provision closely mirrors the Chile FTA provision. However, while the former lists “statement under penalty of perjury or equivalent legal sanction” merely as an example of “sufficient indicia of reliability”, the latter lists “under penalty of perjury or other criminal penalty” and a mandatory standard. Furthermore, while TPP allows the right holder as well as the holder’s agent to submit the statement, the Chile FTA explicitly mentions only the authorized agent in its provision. |

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|  |     |     | counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.  |  |
| Side letter 1 (b)5. a statement that the subscriber agrees to be subject to orders of any court that has jurisdiction over the place where the subscriber's address is located, or, if that address is located outside the Party's territory, any other court with jurisdiction over any place in the Party's territory where the service provider may be found, and in which a copyright infringement suit could be brought with respect to the alleged infringement; | N/A | N/A | Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically <sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been | <p>-ACTA does not have an equivalent section. However, the DMCA contains similar requirements: (g)(3) (D) The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.</p> <p>-Both TPP and Chile FTA require the party filing a counter-notification to consent to the jurisdiction of the courts. However, TPP contains a broader language that grants any court with jurisdiction "over any place in the Party's territory where</p> |

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|   |     |     | <p>infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.</p> | <p>the service provider may be found, and in which a copyright infringement suit could be brought with respect to the alleged infringement.”</p>  |
| <p>Side letter 1 (b)6. a statement that the subscriber will accept service of process in any such suit; and</p> | N/A | N/A |  | <p>-ACTA does not have an equivalent section. However, the DMCA contains similar requirements: (g)(3)(D) The subscriber’s name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber’s address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under</p> |



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|  |     |     |   | <p>subsection (c)(1)(C) or an agent of such person.</p> <p>-The Chile FTA does not contain a specific provision requiring a statement of accepting service of process in any suit involving counter-notifications.</p>  |
| Side letter 1 (b)7. the signature of the subscriber. | N/A | N/A | <p>Art. 17.11.23(f) For purposes of the notice and take down process for functions (b)(ii), (iii), and (iv), each Party shall establish appropriate procedures through an open and transparent process which is set forth in domestic law, for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. At a minimum, each Party shall require that an effective notification of claimed infringement be a written communication, physically or electronically<sup>38</sup> signed by a person who represents, under penalty of perjury or other criminal penalty, that he is an authorized representative of a right holder in the material that is claimed to have been infringed, and containing information that is reasonably sufficient to enable the service provider to identify and locate material that the complaining party claims in good faith to be infringing and to contact that complaining party. At a minimum, each Party shall require that an effective counter-notification contain</p> | <p>-ACTA does not have an equivalent section. However, the DMCA contains similar requirements: (g)(3) (A) A physical or electronic signature of the subscriber.</p> <p>-Both TPP and Chile FTA require the signature of a person filing the counter-notification.</p> |

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|  |  |  | the same information, mutatis mutandis, as a notification of claimed infringement, and in addition, contain a statement that the subscriber making the counter-notification consents to the jurisdiction of the courts of the Party. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation. |  |
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### Technological Protection Measures

| TPP  | TRIPS | ACTA  | Chile FTA  | Comparison/Analysis    |
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| Art. 4.9(a): In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who: | N/A   | Art. 27.5: Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers or producers of phonograms in connection with the exercise of their rights in, and that restrict acts in respect of, their works, performances, and phonograms, which are not authorized by the authors, the performers or the producers of phonograms concerned or permitted by law. | Art. 17.7.5 In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers, and producers of phonograms in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, protected by copyright and related rights: | Essentially identical. |

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| <p>Art. 4.9(a)(i): circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter; or</p>   | <p>N/A</p> | <p>Art. 27.6(a)(i): In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 5, each Party shall provide protection at least against:</p> <p>(a) to the extent provided by its law:</p> <p>(i) the unauthorized circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know</p>   | <p>Art. 17.7.5(a) each Party shall provide that any person who knowingly<sup>18</sup> circumvents without authorization of the right holder or law consistent with this Agreement any effective technological measure that controls access to a protected work, performance, or phonogram shall be civilly liable and, in appropriate circumstances, shall be criminally liable, or said conduct shall be considered an aggravating circumstance of another offense.<sup>19</sup> No Party is required to impose civil or criminal liability for a person who circumvents any effective technological measure that protects any of the exclusive rights of copyright or related rights in a protected work, but does not control access to such work.</p> | <p>-Unlike ACTA, the TPP anti-circumvention provision applies to <u>any</u> effective technological measure and the unauthorized circumvention does not have to be carried out knowingly or with reasonable grounds to know.</p> <p>-Unlike the Chile FTA, TPP omits the “knowingly” standard and applies to circumvention of <u>any</u> effective technological measure. Furthermore, Chile FTA explicitly notes that no Party is required to impose liability in cases of circumvention of effective technological measure that does not control access to protected work. Additionally, while the Chile FTA art. 17.7.5(a) imposes civil liability and criminal liability when appropriate, TPP art. 4.9(a) broadly grants “effective legal remedies”.</p> |
| <p>Art. 4.9(a)(ii): manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products, or components, or offers to the public or provides services, that:</p> <p>(A) are promoted, advertised, or marketed by that person, or by another person acting in concert with that person and with that person’s knowledge, for the purpose of circumvention of any effective technological measure, (B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure, or (C) are primarily designed, produced, or performed for the</p> | <p>N/A</p> | <p>Art. 27.6(a)(ii), (b)(i), (b)(ii): In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 5, each Party shall provide protection at least against:</p> <p>(a) to the extent provided by its law: (ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and (b) the manufacture, importation, or distribution of a device or product, including computer programs, or provision of a service that:</p> <p>(i) is primarily designed or</p> | <p>Art. 17.7.5(b) each Party shall also provide administrative or civil measures, and, where the conduct is willful and for prohibited commercial purposes, criminal measures with regard to the manufacture, import, distribution, sale, or rental of devices, products, or components or the provision of services which:</p> <p>(i) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure, or (ii) do not have a commercially significant purpose or use other than to circumvent any effective technological measure, or</p>  | <p>-Unlike ACTA, TPP extends the scope of liability by adding manufacturers, importers, distributors (in addition to anybody that offers to the public by marketing) of devices, products, as well as components that means of circumventing an effective technological measure. Also unlike ACTA, TPP requires criminal penalties for anyone other than nonprofit libraries, archives, educational institutions, and noncommercial broadcasters who, for profit, willfully circumvents TPM or provides products or services for</p>  |

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| <p>purpose of enabling or facilitating the circumvention of any effective technological measure, shall be liable and subject to the remedies set out in Article [12.12]. Each Party shall provide for criminal procedures and 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. Such criminal procedures and penalties shall include the application to such activities of the remedies and authorities listed in subparagraphs (a), (b), and (f) of Article [15.5] as applicable to infringements, mutatis mutandis.</p> |  | <p>produced for the purpose of circumventing an effective technological measure; or (ii) has only a limited commercially significant purpose other than circumventing an effective technological measure.</p> | <p>(iii) are primarily designed, produced, adapted, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures. Each Party shall ensure that due account is given, inter alia, to the scientific or educational purpose of the conduct of the defendant in applying criminal measures under any provisions implementing this subparagraph. A Party may exempt from criminal liability, and if carried out in good faith without knowledge that the conduct is prohibited, from civil liability, acts prohibited under this subparagraph that are carried out in connection with a nonprofit library, archive or educational institution.</p> | <p>circumvention of TPM, or is an accomplice of someone providing such products or services.</p> <p>-First, While the Chile FTA art. 17.7.5(b) imposes civil liability and criminal liability when the conduct is willful and for prohibited commercial purposes, TPP art. 4.9(a) broadly grants “effective legal remedies”. Second, unlike Chile FTA art. 17.7.5(b), TPP art. 4.9(a)(ii) extends the scope of prohibited activities by replacing “sale or rental of” with “offers to the public, provides, or otherwise traffics in . . .”. Furthermore, TPP art. 4.9(a)(ii)(A) allows for something similar to ‘accomplice liability’ by broadly extending the provision’s jurisdiction over “another person acting in concert with” the principal who is promoting, advertising or marketing. Next, TPP art. 4.9(a)(ii)(B) prohibits goods that “have only a limited commercially significant purpose or use other than to circumvent . . .” which, is a broader standard than TPP art. 17.7.5(b)(ii) which, prohibits goods that “do not have a commercially significant purpose or use other than to circumvent . . .”. Finally, although TPP art. 4.9(a)(ii)(C) and Chile FTA art. 17.7.5(b)(iii) are similar, the former omits goods that are “adapted” for the purpose of enabling or facilitating the</p> |
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|   |     |   |   | circumvention from the purview of liability. Additionally, TPP omits the Chile FTA provision that “[e]ach Party shall ensure that due account is given, inter alia, to the scientific or educational purpose of the conduct of the defendant in applying criminal measures under any provisions implementing this subparagraph.” |
| Art. 4.9(b) In implementing subparagraph (a), no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, with respect to telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measures implementing subparagraph (a).                      | N/A | Art. 27.6(b)(ii) Footnote 15: In implementing paragraphs 5 and 6, no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise contravene its measures implementing these paragraphs. | Art. 17.7.5(a) Footnote 19 Paragraph 5 does not obligate a Party to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such product does not otherwise violate any measure implementing paragraph 5(b).   | Essentially identical.   |
| Art. 4.9(c) Each Party shall provide that a violation of a measure implementing this paragraph is a separate cause of action, independent of any infringement that might occur under the Party’s law on copyright and related rights.   | N/A | Art. 27.8: ... The obligations set forth in paragraphs 5, 6, and 7 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party’s law.   | Art. 17.7.5(c) Each Party shall ensure that nothing in subparagraphs (a) and (b) affects rights, remedies, limitations, or defenses with respect to copyright or related rights infringement.   | -Both ACTA and TPP make circumvention a distinct cause of action, independent of infringement.<br><br>-Chile FTA, TPP, and ACTA are all functionally equivalent.   |
| Art. 4.9(d) Each Party shall confine exceptions and limitations to measures implementing subparagraph (a) to the following activities, which shall be applied to relevant measures in accordance with subparagraph (e):<br><br>(i) 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 | N/A | Art. 27.8: In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraphs 5 and 7, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraphs 5, 6, and 7.   | Art. 17.7.5(d) Each Party shall confine limitations and exceptions to measures implementing subparagraphs (a) and (b) to certain special cases that do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures. In particular, each Party may establish exemptions and limitations to address the following situations and activities in accordance with subparagraph (e): | -ACTA gives a country free reign to create exceptions it finds reasonable, while TPP explicitly limits the possible exceptions.<br><br>-TPP and Chile FTA contain identical exceptions, albeit in different order.   |

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| <p>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;</p> <p>(ii) 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;</p> <p>(iii) 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 subparagraph (a)(ii);</p> <p>(iv) 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;</p> <p>(v) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally</p> |  |  | <p>(i) when an actual or likely adverse effect on noninfringing uses with respect to a particular class of works or exceptions or limitation to copyright or related rights with respect to a class of users is demonstrated or recognized through a legislative or administrative proceeding established by law, provided that any limitation or exception adopted in reliance upon this subparagraph (d)(i) shall have effect for a period of not more than three years from the date of conclusion of such proceeding;</p> <p>(ii) 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 that person,<sup>20</sup> for the sole purpose of achieving interoperability of an independently created computer program with other programs;<sup>21</sup></p> <p>(iii) noninfringing good faith activities, carried out by a researcher who has lawfully obtained a copy, performance, or display of a work, and who has made a reasonable attempt to obtain authorization for such activities, to the extent necessary for the sole purpose of identifying and analyzing flaws and vulnerabilities of encryption technologies;<sup>22</sup></p> <p>(iv) 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</p> |  |
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| <p>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;</p> <p>(vi) lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes;</p> <p>(vii) access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram not otherwise available to it, for the sole purpose of making acquisition decisions; and</p> <p>(viii) 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 by substantial evidence; provided that any limitation or exception adopted in reliance upon this clause shall have effect for a renewable period of not more than three years from the date of conclusion of such proceeding.</p> |     |  | <p>device that does not itself violate any measures implementing subparagraphs (a) and (b);</p> <p>(v) 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;</p> <p>(vi) 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;</p> <p>(vii) lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, or similar government activities; and</p> <p>(viii) access by a nonprofit library, archive, or educational institution to a work not otherwise available to it, for the sole purpose of making acquisition decisions.</p> |   |
| <p>(e) The exceptions and limitations to measures implementing subparagraph (a) for the activities set forth in subparagraph [4.9(d)] may only be applied as follows, and only to the extent that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective</p>   | N/A | <p>Art. 27.8: In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraphs 5 and 7, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraphs 5, 6, and 7.</p> | <p>Art. 17.7.5 (e) Each Party may apply the exceptions and limitations for the situations and activities set forth in subparagraph (d) as follows:</p> <p>(i) any measure implementing subparagraph (a) may be subject to the exceptions and limitations with respect to each situation and activity set forth in subparagraph (d).</p>   | <p>-ACTA gives a country free reign to create exceptions it finds reasonable, while TPP explicitly limits the possible exceptions.</p> <p>-Although the TPP and Chile FTA provisions are very similar, the latter is a permissive provision while the</p> |

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| <p>technological measures:</p> <p>(i) Measures implementing subparagraph (a)(i) may be subject to exceptions and limitations with respect to each activity set forth in subparagraph (d).</p> <p>(ii) Measures implementing subparagraph (a)(ii), as they apply to effective technological measures that control access to a work, performance, or phonogram, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (d)(i), (ii), (iii), (iv), and (vi).</p> <p>(iii) Measures implementing subparagraph (a)(ii), as they apply to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (d)(i) and (vi).</p> |     |  | <p>(ii) any measure implementing subparagraph (b), as it applies to effective technological measures that control access to a work, may be subject to exceptions and limitations with respect to the activities set forth in subparagraphs (d)(ii), (iii), (iv), (v), and (vii).</p> <p>(iii) any measure implementing subparagraph (b), as it applies to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to the activities set forth in subparagraph (d)(ii) and (vii).</p> | <p>former strictly limits the application of the provision by noting that the exceptions and limitations “may only be applied as follows, and only to the extent that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures”. As for the exceptions and limitations, they are essentially identical to each other.</p>  |
| <p>(f) Effective technological measure means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright or any rights related to copyright.</p>  | N/A | <p>Art. 27.5, footnote 14: For the purposes of this Article, technological measures 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, performances, or phonograms, which are not authorized by authors, performers or producers of phonograms, as provided for by a Party’s law. Without prejudice to the scope of copyright or related rights contained in a Party’s law, technological measures shall be deemed effective where the use of protected works, performances, or phonograms is controlled by authors, performers or producers of phonograms through the application of a relevant access control or protection process, such</p> | <p>Art. 17.7.5(f) Effective technological measure means any technology, device, or component that, in the normal course of its operation, controls access to a work, performance, phonogram, or any other protected material, or that protects any copyright or any rights related to copyright, and cannot, in the usual case, be circumvented accidentally.</p>  | <p>-ACTA and TPP definitions are essentially identical, although ACTA provides examples of TPM while TPP does not, and ACTA defines technical measures separately from what makes them effective while TPP only defines effective technological measures.</p> <p>-TPP and Chile FTA definitions are essentially identical. However, the latter further defines “effective technological measure” as any technology, device, or component that “cannot, in the usual case, be circumvented accidentally.”</p> |



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|  |  | as encryption or scrambling, or a copy control mechanism, which achieves the objective of protection. |  |  |
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## Criminal Enforcement

| TPP   | TRIPS   | ACTA   | Chile FTA   | Comparison/Analysis  |
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| Art. 15.1: 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 piracy on a commercial scale. Willful copyright or related rights piracy on a commercial scale includes: (a) significant willful copyright or related rights infringements that have no direct or indirect motivation of financial gain; and (b) willful infringements for purposes of commercial advantage or private financial gain. Each Party shall treat willful importation or exportation of counterfeit or pirated goods as unlawful activities subject to criminal penalties. | Art. 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. | Art. 23.1: 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 piracy on a commercial scale. For the purposes of this Section, acts carried out on a commercial scale include at least those carried out as commercial activities for direct or indirect economic or commercial advantage. | Art. 17.11.22 Each Party shall provide for application of criminal procedures and penalties at least in cases of willful trademark counterfeiting or piracy, on a commercial scale, of works, performances, or phonograms protected by copyright or related rights. Specifically, each Party shall ensure that: (a) (i) willful infringement <sup>33</sup> of copyright and related rights for a commercial advantage or financial gain, is subject to criminal procedures and penalties; <sup>34</sup> (ii) copyright or related rights piracy on a commercial scale includes the willful infringing reproduction or distribution, including by electronic means, of copies with a significant aggregate monetary value, calculated based on the legitimate retail value of the infringed goods; | <p>- TRIPS does not define piracy and takes a broader approach to include ‘other cases of infringement of IPR’. TPP and TRIPS also include willful trade of counterfeit or pirated goods as a criminal activity, while ACTA does not do so explicitly. TRIPS provides for specific criminal remedies consistent with level of penalties applied for crimes of corresponding gravity.</p> <p>-ACTA defines piracy on a commercial scale to include “at least those carried out as commercial activities for direct or indirect economic or commercial advantage”. Therefore, ACTA does not preclude the possibility that piracy on a commercial scale may include infringement with no financial motivation or gain. TPP, on the other hand, defines piracy on a commercial scale to explicitly include infringement with no financial motivations as well as commercial infringement for financial gain. TPP also includes willful trade of counterfeit or pirated goods as a criminal activity, while ACTA does not do so explicitly.</p> <p>-Similar to ACTA and TPP, the Chile FTA contains a provision that mandates each Party to provide for criminal procedures and penalties for</p> |

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|   |     |  |  | willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. However, unlike TPP but similar to ACTA, the Chile FTA does not contain a provision that includes activities “that have no direct or indirect motivation of financial gain” under the purview of piracy on a commercial scale. Furthermore, unlike TPP or ACTA, the Chile FTA provision also defines “piracy on a commercial scale” to include “the willful infringing reproduction or distribution, including by electronic means, of copies with a significant aggregate monetary value, calculated based on the legitimate retail value of the infringed goods”.   |
| Art. 15.2: Each Party shall also provide for criminal procedures and penalties to be applied, even absent willful trademark counterfeiting or copyright or related rights piracy, at least in cases of knowing trafficking in: (a) labels or packaging, of any type or nature, to which a counterfeit trademark has been applied, the use of which is likely to cause confusion, to cause mistake, or to deceive; and (b) counterfeit or illicit labels affixed to, enclosing, or accompanying, or designed to be affixed to, enclose, or accompany the following: (i) a phonogram, (ii) a copy of a computer program or a literary work, (iii) a copy of a motion picture or other audiovisual work, (iv) documentation or packaging for such items; and (c) counterfeit documentation or packaging for items of the type described in subparagraph (b). | N/A | Art. 23.2: Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation and domestic use, in the course of trade and on a commercial scale, of labels or packaging: (a) to which a mark has been applied without authorization which is identical to, or cannot be distinguished from, a trademark registered in its territory; and (b) which are intended to be used in the course of trade on goods or in relation to services which are identical to goods or services for which such trademark is registered. | Chile FTA does not have an equivalent section. | -First, ACTA’s standard for criminal procedures and penalties in cases of infringement of labels or packaging is “wilful importation and domestic use, in the course of trade and on a commercial scale” while TPP’s is “knowing trafficking in”. Second, ACTA’s threshold for infringement is authorized use of identical/undistinguishable trademark, while TPP’s is use of a trademark “which is likely to cause confusion, to cause mistake, or to deceive”. Third, TPP does not require the use of the ‘confusing’ label “on goods or in relation to services which are identical to goods or services for which such trademark is registered”. Finally, TPP explicitly protects against counterfeit or illicit labels affixed to, enclosed in, or accompanying a phonogram, a computer program, a copy of a movie, documentation or packaging for such items. |
| Art. 15.3: Each Party shall also  | N/A | Art. 23.3: A Party may provide   | Chile FTA does not have an                     | -TPP prohibits unauthorized   |

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| provide for criminal procedures and penalties to be applied against any person who, without authorization of the holder of copyright or related rights in a motion picture or other audiovisual work, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work, or any part thereof, from a performance of such work in a public motion picture exhibition facility.  |  | criminal procedures and penalties in appropriate cases for the unauthorized copying of cinematographic works from a performance in a motion picture exhibition facility generally open to the public.  | equivalent section.   | transmission or copying of a “motion picture or other audiovisual work” while ACTA prohibits “unauthorized copying of cinematographic works”.   |
| Art. 15.4: With respect to the offenses for which this Article requires the Parties to provide for criminal procedures and penalties, Parties shall ensure that criminal liability for aiding and abetting is available under its law.  | N/A  | Art. 23.4: With respect to the offences specified in this Article for which a Party provides criminal procedures and penalties, that Party shall ensure that criminal liability for aiding and abetting is available under its law.  | Chile FTA does not have an equivalent section.  | -TPP and ACTA are essentially identical.  |
| Art. 15.5(a): With respect to the offences described in Article 15.[1]-[4] above, each Party shall provide:<br>(a) penalties that include sentences of imprisonment as well as monetary fines sufficiently high to provide a deterrent to future infringements, consistent with a policy of removing the infringer’s monetary incentive. Each Party shall further establish policies or guidelines that 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 is undertaken for commercial advantage or private financial gain; | Art. 61: 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 wilfully and on a commercial scale. | Art. 24: For offences specified in paragraphs 1, 2, and 4 of Article 23 (Criminal Offences), each Party shall provide penalties that include imprisonment as well as monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistently with the level of penalties applied for crimes of a corresponding gravity. | Art. 17.11.22(b) Each Party shall provide for application of criminal procedures and penalties at least in cases of willful trademark counterfeiting or piracy, on a commercial scale, of works, performances, or phonograms protected by copyright or related rights. Specifically, each Party shall ensure that:<br><br>(b) available remedies include sentences of imprisonment and/or monetary fines that are sufficient to provide a deterrent to future infringements and present a level of punishment consistent with the gravity of the offense, which shall be applied by the judicial authorities in light of, inter alia, these criteria; | - TPP, TRIPS, ACTA, and the US-Chile FTA all prescribe both “imprisonment and/or) monetary fines sufficiently high to provide a deterrent to future” infringements. (Note, however, TPP also adds that such penalties should be “consistent with a policy of removing the infringer’s monetary incentive”.) However, TPP omits ACTA’s safeguard that such penalties shall be consistent with “the level of penalties applied for crimes of a corresponding gravity”. Furthermore, TPP requires party members to establish policies or guidelines to “encourage judicial authorities to [actually] impose those penalties”.<br><br>-Unlike TPP and ACTA, the Chile FTA prescribe “imprisonment <u>and/or</u> monetary fines that are sufficient to provide a deterrent to future infringements” and therefore gives the Party members a choice between |

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|  |  |   |   | the two forms of penalties. Next, unlike TPP but similar to ACTA, the Chile FTA provides a safeguard that the level of punishment be “consistent with the gravity of the offense.” Also unlike TPP but similar to ACTA, the Chile FTA does not contain the mandate that the Party member establish policies or guidelines to “encourage judicial authorities to [actually] impose those penalties.”   |
| Art. 15.5(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 assets traceable to the infringing activity, and any documentary evidence relevant to the offense. Each Party shall provide that items that are subject to seizure pursuant to any such judicial order need not be individually identified so long as they fall within general categories specified in the order; | Art. 61: 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 wilfully and on a commercial scale. | Art. 25.1: With respect to the offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence, and the assets derived from, or obtained directly or indirectly through, the alleged infringing activity. | Art. 17.11.22(c) Each Party shall provide for application of criminal procedures and penalties at least in cases of willful trademark counterfeiting or piracy, on a commercial scale, of works, performances, or phonograms protected by copyright or related rights. Specifically, each Party shall ensure that:<br><br>(c) judicial authorities have the authority to order the seizure of suspected counterfeit or pirated goods, assets legally traceable to the infringing activity, documents and related materials, and implements that constitute evidence of the offense. Each Party shall further provide that its judicial authorities have the authority to seize items in accordance with its domestic law. Items that are subject to seizure pursuant to a search order need not be individually | - TRIPS only allows seizure, forfeiture, and destruction of actual infringing goods and materials as a remedy, not suspected infringing goods.<br><br>-TPP requires seizure of “any assets traceable to the infringing activity” while ACTA requires seizure of “assets derived from, or obtained directly or indirectly through the alleged infringing activity”. Traceable may be a broader standard. Additionally, TPP allows seizure of such items without individual identification “so long as they fall within general categories specified in the order”.<br><br>-The Chile FTA provision follows the TPP provision more closely than the ACTA provision. Although both TPP and the Chile FTA contain the “traceable” standard for seizure of assets, the former applies to the broader category of “any assets traceable to the infringing activity” while the latter applies to the |

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|  |   |   | identified so long as they fall within general categories specified in the order;  | narrower category of “assets legally traceable to the infringing activity”. Furthermore, the Chile FTA limits the seizure of implements to those “that constitute evidence of the offense” and also mandates that the authority to seize items be “in accordance with its domestic law.”   |
| Art. 15.5(c): that its judicial authorities shall have the authority to order, among other measures, the forfeiture of any assets traceable to the infringing activity, and shall order such forfeiture at least in cases of trademark counterfeiting; | N/A   | Art. 25.1: With respect to the offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence, and the assets derived from, or obtained directly or indirectly through, the alleged infringing activity. | Art. 17.11.22(d) Each Party shall provide for application of criminal procedures and penalties at least in cases of willful trademark counterfeiting or piracy, on a commercial scale, of works, performances, or phonograms protected by copyright or related rights. Specifically, each Party shall ensure that:<br><br>(d) judicial authorities have the authority to order, among other measures, the forfeiture of any assets legally traceable to the infringing activity, and the forfeiture and destruction of all counterfeit and pirated goods and, at least with respect to copyright and related rights piracy, any related materials and implements actually used in the manufacture of the pirated goods. Parties shall not make compensation available to the infringer for any such forfeiture or destruction; and | -TPP requires forfeiture of “any assets traceable to the infringing activity” while ACTA requires seizure of “assets derived from, or obtained directly or indirectly through, the alleged infringing activity”.<br><br>-TPP requires forfeiture of “any assets traceable to the infringing activity” while the Chile FTA requires the forfeiture of “any assets legally traceable to the infringing activity. However, unlike TPP, the Chile FTA does not contain a provision requiring forfeiture “at least in cases of trademark counterfeiting”. |
| Art. 15.5(d)(i): 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                                | Art. 61: 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 | Art. 25.3: With respect to the offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of all counterfeit   | Art. 17.11.22(d) Each Party shall provide for application of criminal procedures and penalties at least in cases of willful trademark counterfeiting or piracy, on a commercial scale, of works, performances, or phonograms protected by copyright or   | - TRIPS requires forfeiture AND destruction, but only in “appropriate cases”<br><br>-TPP requires forfeiture AND destruction of all counterfeit or pirated goods while ACTA requires forfeiture OR destruction. While both TPP and ACTA allow for an   |

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|  | <p>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 wilfully and on a commercial scale.</p>   | <p>trademark goods or pirated copyright goods. In cases where counterfeit trademark goods and pirated copyright goods are not destroyed, the competent authorities shall ensure that, except in exceptional circumstances, such goods shall be disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall ensure that the forfeiture or destruction of such goods shall occur without compensation of any sort to the infringer.</p>   | <p>related rights. Specifically, each Party shall ensure that:</p> <p>(d) judicial authorities have the authority to order, among other measures, the forfeiture of any assets legally traceable to the infringing activity, and the forfeiture and destruction of all counterfeit and pirated goods and, at least with respect to copyright and related rights piracy, any related materials and implements actually used in the manufacture of the pirated goods. Parties shall not make compensation available to the infringer for any such forfeiture or destruction; and</p>  | <p>exception, unlike ACTA, TPP does not explicitly allow goods to be “disposed of outside the channels of commerce”.</p> <p>-Both TPP and Chile FTA require the “forfeiture and destruction of all counterfeit and pirated goods”. However, while TPP also mandates the forfeiture and destruction of “any articles, consisting of a counterfeit mark”, the Chile FTA does not contain such a mandate.</p>  |
| <p>Art. 15.5(d)(ii): the forfeiture 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;</p> | <p>Art. 61: 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 wilfully and on a commercial scale.</p> | <p>Art. 25.4: With respect to the offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of materials and implements predominantly used in the creation of counterfeit trademark goods or pirated copyright goods and, at least for serious offences, of the assets derived from, or obtained directly or indirectly through, the infringing activity. Each Party shall ensure that the forfeiture or destruction of such materials, implements, or assets shall occur without compensation of any sort to the infringer.</p> | <p>Art. 17.11.22(d) Each Party shall provide for application of criminal procedures and penalties at least in cases of willful trademark counterfeiting or piracy, on a commercial scale, of works, performances, or phonograms protected by copyright or related rights. Specifically, each Party shall ensure that:</p> <p>(d) judicial authorities have the authority to order, among other measures, the forfeiture of any assets legally traceable to the infringing activity, and the forfeiture and destruction of all counterfeit and pirated goods and, at least with respect to copyright and related rights piracy, any related materials and implements actually used in the manufacture of the pirated goods. Parties shall not make</p> | <p>- TRIPS only requires the forfeiture and destruction of materials and implements when their <i>predominant</i> use has been in the commission of the offense. It leaves any further procedures and penalties to the individual nations.</p> <p>-Essentially identical. ACTA further provides that for serious offences, competent authorities shall order the forfeiture or destruction of “assets derived from, or obtained directly or indirectly through the infringing activity”.</p> <p>-While TPP mandates the “forfeiture <i>or</i> destruction of materials and implements that have been used in the creation of pirated <i>or</i> counterfeit goods”, Chile FTA requires the “forfeiture <i>and</i> destruction of . . . any related materials and implements actually used in the manufacture of the pirated goods”, while omitting counterfeit goods within its purview.</p> |

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|   |   |  | compensation available to the infringer for any such forfeiture or destruction; and   | As for the mandate of destruction without compensation of any kind, TPP and Chile FTA are essentially identical.   |
| Art. 15.5(e): that its judicial authorities have the authority to order the seizure or forfeiture of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through, the infringing activity. | N/A   | Art. 25.5.(b): With respect to the offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party may provide that its judicial authorities have the authority to order:<br>(b) the forfeiture of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through, the infringing activity. | Chile FTA does not have an equivalent section.  | -TPP allows seizure OR forfeiture while ACTA only allows forfeiture.   |
| Art. 15.5(g): that its authorities may initiate legal action <i>ex officio</i> with respect to the offenses described in this Chapter, without the need for a formal complaint by a private party or right holder.                                  | Art. 58: Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:<br>(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;<br>(b) the importer and the right holder shall be promptly notified of the suspension.<br>Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, mutatis mutandis, set out at Article 55;<br>(c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith. | Art. 26: Each Party shall provide that, in appropriate cases, its competent authorities may act upon their own initiative to initiate investigation or legal action with respect to the criminal offences specified in paragraphs 1, 2, 3, and 4 of Article 23 (Criminal Offences) for which that Party provides criminal procedures and penalties.  | Art. 17.11.22(e) Each Party shall provide for application of criminal procedures and penalties at least in cases of willful trademark counterfeiting or piracy, on a commercial scale, of works, performances, or phonograms protected by copyright or related rights. Specifically, each Party shall ensure that:<br><br>(e) Appropriate authorities, as determined by each Party, have the authority, in cases of copyright and related rights piracy and trademark counterfeiting, to exercise legal action <i>ex officio</i> without the need for a formal complaint by a person or right holder. | - TRIPS does not require <i>ex officio</i> action, but does require procedural protections when <i>ex officio</i> action is allowed.<br><br>-TPP, ACTA, and Chile FTA are essentially identical. |

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| Art. 16.3(b)(xi): Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer. | N/A | Art. 27.4 A Party may provide, in accordance with its laws and regulations, its competent authorities with the authority to order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, where that right holder has filed a legally sufficient claim of trademark or copyright or related rights infringement, and where such information is being sought for the purpose of protecting or enforcing those rights. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy. | Art. 17.11.23(h) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer. | <p>-TPP lacks ACTA's requirements that: (i) there be a sufficient claim of infringement; (ii) the information be sought for the purpose of protecting or enforcing a copyright; and (iii) the procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity.</p> <p>-The Chile FTA provision is identical to the TPP provision.</p> |
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## Provisional Measures

| TPP   | TRIPS  | ACTA  | Chile FTA  | Comparison/Analysis   |
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| Art. 13.1: Each Party shall act on requests for provisional relief <i>inaudita altera parte</i> expeditiously, and shall, except in exceptional cases, generally execute such requests within ten days. | <p>Art. 50.2 The judicial authorities shall have the authority to adopt provisional measures <i>inaudita altera parte</i> 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.</p> <p>Art. 50.4 Where provisional measures have been adopted <i>inaudita altera parte</i>, the parties affected shall be given</p> | Art. 12.2: Each Party shall provide that its judicial authorities have the authority to adopt provisional measures <i>inaudita altera parte</i> where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed. In proceedings conducted <i>inaudita altera parte</i> , each Party shall provide its judicial authorities with the authority to act expeditiously on requests for provisional measures and to make | Art. 17.11.15 Each Party shall provide that requests for relief <i>inaudita altera parte</i> shall be acted upon expeditiously in accordance with the judicial procedural rules of that Party. | <p>ACTA and TRIPS allows authorities to adopt provisional measures <i>inaudita altera parte</i> where appropriate, giving examples where delay is likely to cause harm. TPP requires such actions, and gives a timeframe of ten days, except in exceptional cases. TRIPS requires notification to the parties affected.</p> <p>-The Chile FTA provision is very similar to the TPP provision. However, while the former requires the request for relief to be "acted upon expeditiously in accordance</p> |



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|   | 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  | a decision without undue delay.  |  | with the judicial procedural rules of that Party”, the latter requires the relief to be executed within ten days, except in exceptional cases.   |
| Art. 13.2: Each Party shall provide that its judicial authorities have the authority to require the applicant, with respect to provisional measures, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant’s right is being infringed or that such infringement is imminent, and to order the applicant to provide a 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. | Art. 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. | Art. 12.4: Each Party shall provide that its authorities have the authority to require the applicant, with respect to provisional measures, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant’s right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to procedures for such provisional measures. | Art. 17.11.16(a) Each Party shall provide that:<br>(a) its judicial authorities have the authority to require the applicant for any provisional measure to provide any reasonably available evidence in order to satisfy themselves to a sufficient degree of certainty that the applicant is the holder of the right in question <sup>30</sup> and that infringement of such right is imminent, and to order the applicant to provide a reasonable security or equivalent assurance in an amount that is sufficient to protect the defendant and prevent abuse, set at a level so as not to unreasonably deter recourse to such procedures. | -TPP, TRIPS, and ACTA are essentially identical. However, TRIPS does not contain the provision that the reasonable security should be “so as not to unreasonably deter recourse to such procedures.”<br><br>-The Chile FTA provision is very similar to TPP and ACTA. However, unlike TPP and ACTA, the Chile FTA requires reasonably available evidence to prove that “the applicant is the holder of the right in question <i>and</i> (not or like TPP and ACTA) that infringement of such right is imminent”. |

## Civil and Administrative Procedures and Remedies

| TPP  | TRIPS   | ACTA  | Chile FTA   | Comparison/Analysis  |
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| <p>Art. 10.2: 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 name is indicated in the usual manner as the author, producer, performer, or publisher of the work, performance, or phonogram is the designated right holder in such work, performance, or phonogram. Each Party shall also provide for a presumption that, in the absence of proof to the contrary, the copyright or related right subsists in such subject matter. 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.</p> | <p>Art. 9.1: Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto.</p> <p>Berne Art. 15.2: The person or body corporate whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.</p> | N/A   | <p>Art. 17.11.6: In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide that:</p> <p>(a) the natural person or legal entity whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram, <sup>27</sup> shall, in the absence of proof to the contrary, be presumed to be the designated right holder in such work, performance, or phonogram.</p> <p>(b) it shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter. A Party may require, as a condition for according such presumption of subsistence, that the work appear on its face to be original and that it bear a publication date not more than 70 years prior to the date of the alleged infringement.</p> | <p>- ACTA does not have an equivalent section. Neither does TRIPS, however, TRIPS requires compliance with the Berne Convention Art. 15, which requires the presumption of authorship. The other presumptions are not in TRIPS or Berne.</p> <p>The US-Chile FTA requires a presumption of authorship and a presumption of copyright, but no presumption of a valid patent or trademark.</p> |
| <p>Art. 11.1: Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights shall be in writing and shall state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based. Each Party shall also provide that</p>   | <p>Art. 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.</p>          | <p>Art. 30: To promote transparency in the administration of its intellectual property rights enforcement system, each Party shall take appropriate measures, pursuant to its law and policies, to publish or otherwise make available to the public information on: ...</p> <p>(b) relevant laws, regulations, final judicial decisions, and</p> | <p>Art. 17.1.12 Each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights, and all final judicial decisions and administrative rulings of general applicability pertaining to the enforcement of such rights, shall be in writing and</p>   | <p>- Both ACTA and TPP require rulings to be made available to the public. Only TPP gives requirements for the form and content of decisions and rulings. Both TRIPS and TPP call for decisions to include the reasoning behind them.</p> <p>-Chile FTA mirrors TPP art. 1.13 and also mirrors the language of TPP art. 11.1 and TPP footnotes 3 and 16.</p>                                 |

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| <p>such decisions and rulings shall be published<sup>16</sup> 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.</p> <p><sup>16</sup> A Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.</p> | <p>Art. 63: [F]inal judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them.</p> | <p>administrative rulings of general application pertaining to the enforcement of intellectual property rights</p>  | <p>shall be published,<sup>2</sup> or where such publication is not practicable, made publicly available, in a national language in such a manner as to enable the other Party and right holders to become acquainted with them, with the object of making the protection and enforcement of intellectual property rights transparent. Nothing in this paragraph shall require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.</p> <p><sup>2</sup> The requirement for publication is satisfied by making the written document available to the public via the Internet.</p> | <p>However, the Chile FTA provision does not contain the TPP art. 11.1 requirement of stating “any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based.” On the other hand, the TPP provisions lack the Chile FTA art. 17.1.2’s goal of “making the protection and enforcement of intellectual property rights transparent.”</p> |
| <p>Art. 11.2: Each Party shall promote the collection and analysis of statistical data and other relevant information concerning intellectual property rights infringements as well as the collection of information on best practices to prevent and combat infringements.</p>   | <p>NA</p>   | <p>Art. 28.2: Each Party shall promote the collection and analysis of statistical data and other relevant information concerning intellectual property rights infringements as well as the collection of information on best practices to prevent and combat infringements.</p> | <p>-Chile FTA does not contain a provision equivalent to TPP art. 11.2 or ACTA art. 28.2.</p>   | <p>-TPP and ACTA provisions are identical. May divert scarce analysis resources toward purposes that are less serving of a country’s needs.</p>  |
| <p>11.3 Each Party shall publicize information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal systems, including statistical information that the Party collects for such purposes.</p>  | <p>N/A</p>  | <p>Art. 30: To promote transparency in the administration of its intellectual property rights enforcement system, each Party shall take appropriate measures, pursuant to its law and policies, to publish or otherwise make available to the public information</p>            | <p>Art. 17.11.4 Each Party shall publicize or make available to the public information that each Party might collect regarding its efforts to provide effective enforcement of intellectual property rights, including statistical</p>  | <p>-TPP and ACTA are essentially identical, except TPP explicitly names “statistical information that the Party collects for such purposes” to be within the purview of the type of information to be made available to the public.</p>  |

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|  |  | on: ...<br>(c) its efforts to ensure an effective system of enforcement and protection of intellectual property rights.  | information.   | -The Chile FTA provision is essentially identical to TPP and ACTA.   |
| Art. 11.4 Nothing in this Chapter shall require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private. | Art. 39: 1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.<br>2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:<br>(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;<br>(b) has commercial value because it is secret; and<br>(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.<br>3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of | Art. 4.1 Nothing in this Agreement shall require a Party to disclose:<br>(a) information, the disclosure of which would be contrary to its law, including laws protecting privacy rights, or international agreements to which it is party;<br>(b) confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest; or<br>(c) confidential information, the disclosure of which would prejudice the legitimate commercial interests of particular enterprises, public or private. | Art. 17.1.12 Each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights, and all final judicial decisions and administrative rulings of general applicability pertaining to the enforcement of such rights, shall be in writing and shall be published, <sup>2</sup> or where such publication is not practicable, made publicly available, in a national language in such a manner as to enable the other Party and right holders to become acquainted with them, with the object of making the protection and enforcement of intellectual property rights transparent. Nothing in this paragraph shall require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.<br><br><sup>2</sup> The requirement for publication is satisfied by making the written document available to the public via the Internet. | -TRIPS Art. 64 is nearly identical to TPP, but TRIPS also includes the extra protections in Art. 39.<br><br>-ACTA is very similar, except ACTA further prohibits the disclosure of “information, the disclosure of which would be contrary to its law, including laws protecting privacy rights, or international agreements to which it is party.”<br><br>-The last sentence of Chile FTA art. 17.1.12 is identical to TPP art. 11.4. Therefore, unlike ACTA, Chile FTA art. 17.1.12 does not contain the provision that further prohibits the disclosure of “information, the disclosure of which would be contrary to its law, including laws protecting privacy rights, or international agreements to which it is party.” |

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|  | <p>undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.</p> <p>Art. 63.4: Nothing in paragraphs [on transparency] shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.</p>  |  |  |  |
| <p>12.1 Each Party shall make available to right holders<sup>17</sup> civil judicial procedures concerning the enforcement of any intellectual property right.</p> | <p>Art. 42: Members shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless</p> | <p>Art. 7.1 Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right as specified in this Section.</p> | <p>Art. 17.11.7 Each Party shall make available to right holders<sup>29</sup> civil judicial procedures concerning the enforcement of any intellectual property right.</p> | <p>- TPP does not contain the Defendants' rights provisions of TRIPS.</p> <p>-TPP and ACTA are essentially identical.</p> <p>-Chile FTA and TPP are identical.</p> |

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|  | this would be contrary to existing constitutional requirements.  |   |   |  |
| Art. 12.2 Fn 17 For the purposes of this Article, the term “right holder” shall include exclusive licensees as well as federations and associations having the legal standing and authority to assert such rights; the term “exclusive licensee” shall include the exclusive licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property. | Art. 42 Fn 11: For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.  | Art. 5 For the purpose of this Agreement, unless otherwise specified:<br>(1) right holder includes a federation or an association having the legal standing to assert rights in intellectual property;  | Art. 17.11 Fn 29 For the purposes of this Article, the term “right holder” shall include duly authorized licensees as well as federations and associations having legal standing and authorization to assert such rights. | -TPP contains a broader definition of “right holder” than ACTA, by explicitly including “exclusive licensees” in addition to “federation or an association”.<br><br>-Chile FTA and TPP are very similar. However, while the former refers to “duly authorized licensees”, the latter refers to “exclusive licensees” and explains that “the term “exclusive licensee” shall include the exclusive licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.” |
| Art. 12.2: Each Party shall provide for injunctive relief consistent with Article 44 of the TRIPS Agreement, and shall also make injunctions available to prevent the exportation of infringing goods.   | Art. 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.<br>2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing | Art. 8.1: Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to issue an order against a party to desist from an infringement, and inter alia, an order to that party or, where appropriate, to a third party over whom the relevant judicial authority exercises jurisdiction, to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce. | Chile FTA does not have an equivalent section.  | -TPP explicitly applies injunctions to exports, while ACTA applies them to the channels of commerce generally. TRIPS only applies them to the channels of commerce in the party’s jurisdiction.<br><br>-Unlike ACTA, TPP narrows the scope of injunctions by providing that injunctive relief has to be consistent with art. 44 of TRIPS. Also unlike ACTA, the injunctive relief under TPP does not extend to third parties.  |

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|   | <p>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 are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.</p> |   |   |  |
| <p>Art. 12.3(a)(i) Each Party shall provide that:<br/>(a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder:<br/>(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement, and</p> | <p>Art. 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.</p>   | <p>Art. 9.1: Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to order the infringer who, knowingly or with reasonable grounds to know, engaged in infringing activity to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement. In determining the amount of damages for infringement of intellectual property rights, a Party's judicial authorities shall have the authority to consider, inter alia, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price.</p> | <p>Art. 17.11.8(a)(i) Each Party shall provide that:<br/>(a) In civil judicial proceedings, the judicial authorities shall have the authority to order the infringer to pay the right holder:<br/>(i) 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 engaged in infringing activity, and</p> | <p>- Unlike ACTA and TRIPS, TPP does not require the infringer to have "knowingly or with reasonable grounds to know, engaged in infringing activity". However, TPP, TRIPS, and ACTA all require the infringer to "pay damages adequate to compensate for the injury". For the part on determining the amount of damages, please see <i>infra</i> TPP art. 12.3(b)/ACTA art. 9.1</p> <p>-TPP art. 12.3(a)(i) and Chile FTA art. 17.11.8(a)(i) are essentially identical.</p> |

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| Art. 12.3(a)(ii): at least in the case of copyright or related rights infringement and trademark counterfeiting, the profits of the infringer that are attributable to the infringement and that are not taken into account in computing the amount of the damages referred to in clause (i).      | Art. 45.2: ... 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. | Art. 9.2: At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the infringer to pay the right holder the infringer's profits that are attributable to the infringement. A Party may presume those profits to be the amount of damages referred to in paragraph 1.  | Art. 17.11.8(a)(ii) Each Party shall provide that:<br>(a) In civil judicial proceedings, the judicial authorities shall have the authority to order the infringer to pay the right holder:<br>(ii) at least in the case of infringements of trademark, copyright, or related rights, the profits of the infringer that are attributable to the infringement and are not already taken into account in determining injury. | - ACTA allows judicial authorities to base damages on the infringer's profits; TPP and TRIPS do not. However, all allow the judicial authorities to order the infringer to pay the profits to the rights holder. Unlike ACTA, TPP does not presume the infringer's profits to be the amount of damages suffered as the result of infringement. Instead, TPP separates the compensatory damages for the injury caused by the infringement from the profits of the infringer that were not taken into account in computing the compensatory damages. However, both allow the judicial authorities to order the infringer to pay the profits to the rights holder.<br><br>-Chile FTA and TPP are essentially identical. |
| Art. 12.3(b): in determining damages for infringement of intellectual property rights, its judicial authorities shall consider, inter alia, the value of the infringed good or service, measured by the suggested retail price or other legitimate measure of value submitted by the right holder. | N/A   | Art. 9.1: Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to order the infringer who, knowingly or with reasonable grounds to know, engaged in infringing activity to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement. In determining the amount of damages for infringement of intellectual property rights, a Party's judicial authorities shall have the authority to consider, inter alia, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price. | Art. 17.11.8(b) Each Party shall provide that:<br>(b) In determining injury to the right holder, the judicial authorities shall, <i>inter alia</i> , consider the legitimate retail value of the infringed goods.   | -Both TPP and ACTA allow computation of damages by using any "legitimate measure of value" submitted by the right holder. However, TPP does not explicitly list lost profits or market price as means of measurement.<br><br>-Although the TPP provision closely mirrors the Chile FTA provision, the former contains a broader standard by allowing the judicial authorities to consider "other legitimate measure of value submitted by the right holder", thereby giving the right holder great discretion.   |



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| <p>Art. 12.4: In civil judicial proceedings, each Party shall, at least with respect to works, phonograms, and performances protected by copyright or related rights, and in cases of trademark counterfeiting, establish or maintain a system that provides for pre-established damages, which shall be available upon the election of the right holder. Pre-established damages shall be in an amount sufficiently high to constitute a deterrent to future infringements and to compensate fully the right holder for the harm caused by the infringement. In civil judicial proceedings concerning patent infringement, each Party shall provide that its judicial authorities shall have the authority to increase damages to an amount that is up to three times the amount of the injury found or assessed.</p> | <p>Art. 45.2: 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.</p> | <p>Art. 9.3: At least with respect to infringement of copyright or related rights protecting works, phonograms, and performances, and in cases of trademark counterfeiting, each Party shall also establish or maintain a system that provides for one or more of the following:<br/>(a) pre-established damages; or<br/>(b) presumptions for determining the amount of damages sufficient to compensate the right holder for the harm caused by the infringement; or<br/>(c) at least for copyright, additional damages.</p> | <p>Art. 17.11.9 In civil judicial proceedings, each Party shall, at least with respect to works protected by copyright or related rights and trademark counterfeiting, establish pre-established damages, prescribed by each Party's domestic law, that the judicial authorities deem reasonable in light of the goals of the intellectual property system and the objectives set forth in this Chapter.</p> | <p>-TRIPS allows pre-established damages, but does not require them.</p> <p>-Although both TPP and ACTA require pre-established damages sufficient to compensate the right holder for the harm caused by the infringement, TPP also requires the amount to be "sufficiently high to constitute a deterrent to future infringement". Additionally, unlike ACTA, TPP provides that in patent infringement cases, the damages may be increased up to three times the injury.</p> <p>-The beginning of the TPP provision closely mirrors the Chile FTA provision. However, TPP expands the provision by allowing pre-established damages to "be available upon the election of the right holder." Furthermore, TPP mandates that the pre-established damages not only be sufficient to compensate but also high enough to constitute a deterrent to future infringements. Furthermore, the TPP provision contains a dangerous mandate that in patent infringement cases, the judicial authorities shall have the power to set pre-established damages be up to triple the amount of injury assessed. This provision, in essence, allows granting the right holder great windfall, in the name of intellectual property enforcement. On a similar note, TPP lacks the Chile FTA's safeguard that the pre-established damages be "reasonable in light of the goals of the [IP] system and the objectives set forth in this Chapter." Overall, the TPP provision is a dangerous expansion from pre-existing standards, as established under the Chile FTA.</p> |
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| <p>Art. 12.5: Each Party shall provide that its judicial authorities, except in exceptional circumstances, have the authority to order, at the conclusion of civil judicial proceedings concerning copyright or related rights infringement, trademark infringement, or patent infringement, that the prevailing party shall be awarded payment by the losing party of court costs or fees and, at least in proceedings concerning copyright or related rights infringement or willful trademark counterfeiting, reasonable attorney's fees. Further, each Party shall provide that its judicial authorities, at least in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning patent infringement, that the prevailing party shall be awarded payment by the losing party of reasonable attorneys' fees.</p> | <p>Art. 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.</p>   | <p>Art. 9.5: Each Party shall provide that its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of at least copyright or related rights, or trademarks, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under that Party's law.</p>   | <p>Art. 17.11.10 Each Party shall provide that, except in exceptional circumstances, its judicial authorities have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of copyright or related rights and trademark counterfeiting, that the prevailing right holder shall be paid the court costs or fees and reasonable attorney's fees by the infringing party.</p> | <p>- TRIPS applies to any "infringement of [an] intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity."</p> <p>-Unlike ACTA, under TPP the losing party may be required to pay for court costs and attorney's fees in cases concerning patent infringement (in addition to copyright and trademark infringement cases).</p> <p>-Unlike under the Chile FTA, the TPP provision allows judicial authorities to order payment of court costs or fees, even in patent infringement cases. Furthermore, the TPP provision also allows the judicial authorities to order reasonable attorney's fees in exceptional circumstances in cases concerning patent infringement.</p> |
| <p>Art. 12.6 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 infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.</p>  | <p>Art. 61: Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful 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.</p> | <p>Art. 12.3 At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the seizure or other taking into custody of suspect goods, and of materials and implements relevant to the act of infringement, and, at least for trademark counterfeiting, documentary evidence, either originals or copies thereof, relevant to the infringement.</p> | <p>Art. 17.11.11 In civil judicial proceedings concerning copyright and related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods, and of material and implements by means of which such goods are produced where necessary to prevent further infringement.</p>                | <p>-TRIPS only allows seizure of goods in criminal proceedings, while TPP and ACTA allow it in civil proceedings.</p> <p>-TPP and ACTA are very similar. However, while TPP allows the seizure of "allegedly infringing goods, materials and implements relevant to the infringement", ACTA allows the seizure of "suspect goods, and of materials and implements relevant to the act of infringement". Accordingly, TPP uses the standard of "allegedly infringing" while ACTA uses the standard of "suspect goods".</p> <p>-TPP and Chile FTA are very similar. However, while TPP allows</p>   |

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|   | 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 wilfully and on a commercial scale.  |   |   | the seizure of “allegedly infringing goods, materials and implements”, the Chile FTA allows the seizure of “suspected infringing goods, and of material and implements”, similar to ACTA. Furthermore, unlike TPP, the Chile FTA does not contain a provision that allows seizure of documentary evidence, at least for trademark counterfeiting cases.   |
| Art. 12.7(a): Each Party shall provide that in civil judicial proceedings:<br>(a) at the right holder’s request, goods that have been found to be pirated or counterfeit shall be destroyed, except in exceptional circumstances;   | Art. 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 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. .... | Art. 10.1: At least with respect to pirated copyright goods and counterfeit trademark goods, each Party shall provide that, in civil judicial proceedings, at the right holder’s request, its judicial authorities have the authority to order that such infringing goods be destroyed, except in exceptional circumstances, without compensation of any sort.  | Art. 17.11.12(a) In civil judicial proceedings, each Party shall provide that:<br>(a) its judicial authorities shall have the authority to order, at their discretion, the destruction, except in exceptional cases, of the goods determined to be infringing goods;  | - TRIPS only requires the disposal of the goods outside the channels of commerce OR destruction.<br><br>-Although both TPP and ACTA require the destruction of pirated or counterfeit goods at the request of the right holder, unlike ACTA and TRIPS, TPP does not require the destruction of the goods to be carried out without compensation of any sort (but does make this requirement for criminal sanctions, see Art. 15.5(d)(ii) below).<br><br>-TPP and Chile FTA are very similar. However, while the TPP provision allows for the destruction “at the right holder’s request”, the Chile FTA provision allows for the destruction at the discretion of the judicial authority. |
| Art. 12.7(b): its judicial authorities shall have the authority to order that materials and implements that have been used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further | Art. 46: ... 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              | Art. 10.2: Each Party shall further provide that its judicial authorities have the authority to order that materials and implements, the predominant use of which has been in the manufacture or creation of such infringing goods, be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. | Art. 17.11.12(c) In civil judicial proceedings, each Party shall provide that:<br>(c) the judicial authorities shall have the authority to order, at their discretion, that material and implements actually used in the manufacture of the infringing goods be destroyed. In considering such requests, the judicial authorities shall take into account, inter alia, the need for proportionality | - TRIPS only requires disposal outside the channels of commerce, not destruction, and only when the creation of infringing goods was the predominant use.<br><br>-TPP allows the destruction of materials and implements that merely have been used in manufacture or creation of infringing goods, while ACTA requires that such goods have been <b><i>predominantly</i></b> so used. Also unlike  |

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| infringements; and   | the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.   |   | between the gravity of the infringement and remedies ordered, as well as the interests of third parties holding an ownership, possessory, contractual, or secured interest; and   | <p>ACTA, TPP allows disposal of infringing goods outside the channels of commerce as an alternative to the destruction of the goods in exceptional circumstances.</p> <p>-Both TPP and the Chile FTA allow the destruction of materials and implements. However, unlike the latter, the former mandates such destruction “without compensation of any sort” and also allows disposal of such materials and implements, without compensation of any sort, as an alternative. Furthermore, TPP lacks the safeguards of the Chile FTA which mandates the consideration of “the need for proportionality . . . as well as the interests of third parties.”</p> |
| Art. 12.7(c): in regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce. | Art. 46: 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. | Art. 20.2: In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce. | Art. 17.11.12(d) In civil judicial proceedings, each Party shall provide that:<br>(d) in regard to counterfeited trademarked goods, the simple removal of the trademark unlawfully affixed shall not permit release of the goods into the channels of commerce. However, such goods may be donated to charity when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark. | <p>-Unlike TRIPS and ACTA, TPP does not provide an exception in exceptional cases to allow the removal of the trademark to permit the release of counterfeit trademarked goods.</p> <p>-The first part of TPP art. 12.7(c) is identical to Chile FTA art. 17.11.12(d). However, the former omits the latter’s provisions which allows such counterfeited trademarked goods to be “donated to charity when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark.”</p>  |

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| <p>Art. 12.8: 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 any information that the infringer possesses or controls regarding any persons or entities 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.</p> | <p>Art. 47: Members may provide that the judicial authorities shall 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>Art. 11: Without prejudice to its law governing privilege, the protection of confidentiality of information sources, or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority, upon a justified request of the right holder, to order the infringer or, in the alternative, the alleged infringer, to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. Such information may include information regarding any person involved in any aspect of the infringement or alleged infringement and regarding the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of such goods or services and of their channels of distribution.</p> | <p>Art. 17.11.13 In civil judicial proceedings, each Party shall provide that the judicial authorities shall have the authority to order the infringer to provide any information the infringer may have regarding persons involved in the infringement, and regarding the distribution channels of infringing goods. Judicial authorities shall also have the authority to impose fines or imprisonment on infringers who do not comply with such orders, in accordance with each Party's domestic law.</p> | <p>- TRIPS only says that members <i>may</i> provide judicial authorities with authority, while TPP and ACTA say that members <i>shall</i> provide this authority.</p> <p>-Unlike ACTA, TPP does not contain the safeguards providing that access to information shall be “without prejudice to [each country’s] law governing privilege, the protection of confidentiality of information sources, or the processing of personal data . . . .” Additionally, TPP does not require the access to such information to be conditional “upon a justified request of the right holder”. Finally, TPP omits the word “alleged” and instead, simply refers to “infringement” and “infringer”. Other than that, TPP closely follows the language of ACTA.</p> <p>-The TPP provision is broader than the Chile FTA provision. For example, unlike the Chile FTA, TPP allows judicial authorities to order the disclosure of information regarding “<i>any</i> persons <i>or entities</i> involved in <i>any aspect</i> of the infringement and regarding the <i>means of production</i> or distribution.” Furthermore, unlike the Chile FTA TPP explicitly allows identification of “third persons involved in the production and distribution of the infringing goods or services”. As for the Chile FTA sentence concerning the authority to “impose fines or imprisonment on infringers who do not comply with such orders”, this is reflected in TPP art. 12.9, to be discussed below.</p> |
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| <p>Art. 12.9: Each Party shall provide that its judicial authorities have the authority to:</p> <p>(a) fine or imprison, in appropriate cases, a party to a civil judicial proceeding who fails to abide by valid orders issued by such authorities; and</p> <p>(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.</p> | N/A  | N/A   | <p>Art. 17.11.13 In civil judicial proceedings, each Party shall provide that the judicial authorities shall have the authority to order the infringer to provide any information the infringer may have regarding persons involved in the infringement, and regarding the distribution channels of infringing goods. Judicial authorities shall also have the authority to impose fines or imprisonment on infringers who do not comply with such orders, in accordance with each Party's domestic law.</p> | <p>-TPP interferes with the sovereignty of signatories by mandating judicial procedures. ACTA does not have an equivalent section.</p> <p>-The second sentence of the Chile FTA art. 17.11.13 is reflected in TPP art. 12.9(a). However, the TPP provision expands the standard by explicitly allowing 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."</p> |
| <p>Art. 12.10: 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.</p>   | <p>Art. 49: To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.</p> | <p>Art. 7.2: 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 shall conform to principles equivalent in substance to those set forth in this Section.</p> | <p>Art. 17.11.14 To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in paragraphs 1 through 13.</p>   | <p>-TPP, TRIPS, ACTA, and Chile FTA are identical.</p>  |

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| <p>Art. 12.12: In civil judicial proceedings concerning the acts described in Article 4.[9] (TPMs) and Article 4.[10] (RMI), each Party shall provide that its judicial authorities shall, at the least, have the authority to:</p> <p>(a) impose provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity;</p> <p>(b) provide an opportunity for the right holder to elect between actual damages it suffered (plus any profits attributable to the prohibited activity not taken into account in computing those damages) or pre-established damages;</p> <p>(c) order payment to the prevailing right holder at the conclusion of civil judicial proceedings of court costs and fees, and reasonable attorney's fees, by the party engaged in the prohibited conduct; and</p> <p>(d) order the destruction of devices and products found to be involved in the prohibited activity.</p> <p>No Party shall make damages available under this paragraph against a nonprofit library, archives, educational institution, or public noncommercial broadcasting entity that sustains the burden of proving that such entity was not aware and had no reason to believe that its acts constituted a prohibited activity.</p> | <p>N/A</p> | <p>Art. 27.8: In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraphs 5 and 7, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraphs 5, 6, and 7. The obligations set forth in paragraphs 5, 6, and 7 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law.</p> | <p>Chile FTA does not have an equivalent section.</p> | <p>ACTA does not provide specific minimum remedies, while TPP does. TPP requires an exception for nonprofit educational use, while ACTA only allows it. ACTA also explicitly does not interfere with a country's existing copyright law.</p> <p>Check against US law</p> |
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## Special Requirements Related to Border Enforcement

| TPP   | TRIPS   | ACTA  | Chile FTA   | Comparison/Analysis   |
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| <p>Art. 14.1: 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 goods 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 <i>prima facie</i> 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 apply to all points of entry to its territory and remain in force for a period of not less than one year from the date of application, or the period that the good is protected by copyright or the relevant trademark registration is valid, whichever is shorter.</p> | <p>Art. 51. Suspension of Release by Customs Authorities. Members shall, in conformity with the provisions set out below, adopt procedures (13) to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods (14) 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.</p> <p>Art. 52. Application. Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is <i>prima facie</i> an infringement of the right holder's intellectual</p> | <p>Art. 17.1: Each Party shall provide that its competent authorities require a right holder that requests the procedures described in subparagraphs 1(b) and 2(b) of Article 16 (Border Measures) to provide adequate evidence to satisfy the competent authorities that, under the law of the Party providing the procedures, there is <i>prima facie</i> an infringement of the right holder's intellectual property right, and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspect goods reasonably recognizable by the competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to the procedures described in subparagraphs 1(b) and 2(b) of Article 16 (Border Measures).</p> | <p>Art. 17.11.17 Each Party shall provide that any right holder initiating procedures for suspension by the customs authorities of the release of suspected counterfeit trademark or pirated copyright goods<sup>31</sup> into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the Party of importation, there is <i>prima facie</i> an infringement of the right holder's intellectual property right and to supply sufficient information to make the suspected goods reasonably recognizable to the customs authorities. The sufficient information required shall not unreasonably deter recourse to these procedures.</p> | <p>-TPP, TRIPS and ACTA provisions similarly require a <i>prima facie</i> showing of infringement and sufficient evidence to make the suspected goods reasonably recognizable. However, TPP goes further than ACTA by requiring that "application to suspend the release of goods apply to all points of entry to its territory and remain in force for a period of not less than one year from the date of application, or the period that the good is protected by copyright or the relevant trademark registration is valid, whichever is shorter." TRIPS establishes a shorter period of suspension if proceedings are not initiated (10 days).</p> <p>-TPP and Chile FTA provisions are very similar. However, unlike the latter, the former also applies to "confusingly similar trademark goods" in addition to counterfeit goods and pirated copyright goods. Additionally, TPP further provides that the "application to suspend the release of goods apply to all points of entry to its territory and remain in force for a period of not less than one year from the date of application, or the period that the good is protected by copyright or the relevant trademark registration is valid, whichever is shorter."</p> |



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|  | <p>property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.</p> <p>Art. 55. Duration of Suspension. If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, 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, whether these measures</p> |  |  |  |
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|  | <p>shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.</p> <p>[Art. 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].</p> |  |  |  |
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| <p>FN 20: For purposes of Article 14: (a) <b>counterfeit trademark goods</b> 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 (b) <b>pirated copyright goods</b> 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.</p> | <p>For Article 51<br/>FN13: It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.<br/>FN14: For the purposes of this Agreement:<br/>(a)"counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;<br/>(b)"pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which 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.</p> | <p>Arts. 5(d), (k): ... (d) counterfeit trademark goods means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country in which the procedures set forth in Chapter II (Legal Framework for Enforcement of Intellectual Property Rights) are invoked; ... (k) pirated copyright goods means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which 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 in which the procedures set forth in Chapter II (Legal Framework for Enforcement of Intellectual Property Rights) are invoked;</p> | <p>FN 31: For the purposes of paragraphs 17 through 19:<br/><br/>(a) counterfeit trademark goods means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;<br/><br/>(b) pirated copyright goods means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which 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.</p> | <p>-TPP and TRIPS base their definitions on whether there is infringement in the country of importation, while ACTA bases its definitions on whether there is infringement in the country where ACTA procedures are invoked.<br/><br/>-TPP and Chile FTA are identical.</p> |
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| <p>Art. 14.2: 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 such security or equivalent assurance shall not unreasonably deter recourse to these procedures. A Party may provide that such security may be in the form of a bond conditioned to hold the 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.</p> | <p>Art. 53: Security or Equivalent Assurance. 1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures. 2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.</p> | <p>Art. 18: Each Party shall provide that its competent authorities have the authority to require a right holder that requests the procedures described in subparagraphs 1(b) and 2(b) of Article 16 (Border Measures) to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures. A Party may provide that such security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of, or detention of, the goods in the event the competent authorities determine that the goods are not infringing. A Party may, only in exceptional circumstances or pursuant to a judicial order, permit the defendant to obtain possession of suspect goods by posting a bond or other security.</p> | <p>Art. 17.11.18 Each Party shall provide the competent authorities with the authority to require an applicant to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.</p> | <p>-TPP and ACTA are essentially identical. TRIPS contains the same provision but goes further by establishing that the importer must provide a security to cover for the potential loss of the right holder when the goods are released if (1) a decision on the merits of an application is pending, (2) all other importation conditions have been complied with and (3) the 10 day period has expired. TRIPS also expressly provides for the indemnification of the importer by the applicant in case the importer suffers an injury by the detention of goods.</p> <p>-The first two sentences of TPP art. 14.2 are essentially identical to Chile FTA art. 17.11.18. However, TPP further adds that “[a] Party may provide that such 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.”</p> |
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|   | <p>Art. 56. Indemnification of the Importer and of the Owner of the Goods. Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.</p>   |   |  |   |
| <p>Art. 14.3: Where its competent authorities have seized goods that are counterfeit or pirated, a Party shall provide that its competent authorities have the authority to inform the right holder within 30-days<sup>21</sup> of the seizure of the names and addresses of the consignor, exporter, consignee, or importer, a description of the merchandise, quantity of the merchandise, and, if known, the country of origin of the merchandise.</p> | <p>Art. 54. Notice of Suspension. The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.</p> <p>Art. 57. Right of Inspection and Information. Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent</p> | <p>Art. 22: Without prejudice to a Party's laws pertaining to the privacy or confidentiality of information:</p> <p>(a) a Party may authorize its competent authorities to provide a right holder with information about specific shipments of goods, including the description and quantity of the goods, to assist in the detection of infringing goods;</p> <p>(b) a Party may authorize its competent authorities to provide a right holder with information about goods, including, but not limited to, the description and quantity of the goods, the name and address of the consignor, importer, exporter, or consignee, and, if known, the country of origin of the goods, and the name and address of the</p> | <p>Art. 17.11.19 Where the competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant the competent authorities the authority to inform the right holder, at the right holder's request, of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.</p> | <p>- TPP does not provide any protections for privacy or confidentiality of information. TRIPS and ACTA are similar but TRIPS does not specify the period by which authorities have to notify the importer or the applicant of the suspension of the release of the goods.</p> <p>- TPP and Chile FTA provisions are very similar. However, the TPP provision kicks in once the goods have been seized while the Chile FTA provision kicks in once the "competent authorities have made a determination that goods are counterfeit or pirated." Furthermore, while the TPP provision is activated at the discretion of the competent authorities, the Chile FTA provision</p> |

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|  | <p>opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.</p> | <p>manufacturer of the goods, to assist in the determination referred to in Article 19 (Determination as to Infringement);</p> <p>(c) unless a Party has provided its competent authorities with the authority described in subparagraph (b), at least in cases of imported goods, where its competent authorities have seized suspect goods or, in the alternative, made a determination referred to in Article 19 (Determination as to Infringement) that the goods are infringing, the Party shall authorize its competent authorities to provide a right holder, within thirty days[8] of the seizure or determination, with information about such goods, including, but not limited to, the description and quantity of the goods, the name and address of the consignor, importer, exporter, or consignee, and, if known, the country of origin of the goods, and the name and address of the manufacturer of the goods.</p> |  | <p>is activated “at the right holder’s request.” Finally, unlike the Chile FTA, the TPP’s scope of information that can be communicated to the right holder includes the name of the exporter and also the country of origin of the merchandise, if known.</p> |
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| <p>Art. 14.4: Each Party shall provide that its competent authorities may initiate border measures <i>ex officio</i> with respect to imported, exported, or in-transit merchandise, or merchandise in free trade zones, that is suspected of being counterfeit or confusingly similar trademark goods, or pirated copyright goods.</p>          | <p>Art. 58. Ex Officio Action. Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed: (a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers; (b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, mutatis mutandis, set out at Article 55; (c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.</p> | <p>Art. 16: 1. Each Party shall adopt or maintain procedures with respect to import and export shipments under which: (a) its customs authorities may act upon their own initiative to suspend the release of suspect goods; and (b) where appropriate, a right holder may request its competent authorities to suspend the release of suspect goods. 2. A Party may adopt or maintain procedures with respect to suspect in-transit goods or in other situations where the goods are under customs control under which: (a) its customs authorities may act upon their own initiative to suspend the release of, or to detain, suspect goods; and (b) where appropriate, a right holder may request its competent authorities to suspend the release of, or to detain, suspect goods.</p> | <p>Art. 17.11.20 Each Party shall provide that the competent authorities are permitted to initiate border measures <i>ex officio</i>, without the need for a formal complaint from a person or right holder. Such measures shall be used when there is reason to believe or suspect that goods being imported, destined for export, or moving in transit are counterfeit or pirated. In case of goods in transit, each Party, in conformity with other international agreements subscribed to by it, may provide that <i>ex officio</i> authority shall be exercised prior to sealing the container, or other means of conveyance, with the customs seal, as applicable.<sup>32</sup></p> | <p>TPP broadly allows initiation of “Border Measures,” while ACTA lists specific procedures. Additionally, TPP concerns not only suspected counterfeit goods but also “confusingly similar trademark goods”. TRIPS is broader in the sense that it concerns the infringement of an intellectual property right. However, TRIPS seems to have a higher standard as it requires the authorities to ‘acquire prima facie evidence,’ whereas TPP just requires authorities to ‘suspect’ a good is counterfeit or confusingly similar or pirated copyright.</p> <p>-TPP and Chile FTA provisions are very similar and both apply to imported, exported, and in-transit merchandise. However, the TPP provision also applies to merchandise in free trade zones. Furthermore, unlike the Chile FTA, the TPP provision applies to “confusingly similar trademark goods.” Finally, the TPP provision lacks the Chile FTA’s provision that “[i]n case of goods in transit, each Party, in conformity with other international agreements subscribed to by it, may provide that <i>ex officio</i> authority shall be exercised prior to sealing the container, or other means of conveyance, with the customs seal, as applicable.”</p> |
| <p>Art. 14.5: Each Party shall adopt or maintain a procedure by which its competent authorities shall determine, within a reasonable period of time after the initiation of the procedures described under Article 14.1 whether the suspect goods infringe an intellectual property right. Where a Party provides administrative procedures</p> | <p>Art. 51. Suspension of Release by Customs Authorities. Members shall, in conformity with the provisions set out below, adopt procedures (13) to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods (14)</p>  | <p>Art. 19: Each Party shall adopt or maintain procedures by which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in Article 16 (Border Measures), whether the suspect goods infringe an intellectual property right.</p>  | <p>Chile FTA does not have an equivalent section.</p>   | <p>- The first sentence of TPP is essentially identical to ACTA. However, TPP further adds that “Where a Party provides administrative procedures for the determination of an infringement, it shall also provide its authorities with the authority to impose administrative penalties following a determination that the goods are</p>  |

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| for the determination of an infringement, it shall also provide its authorities with the authority to impose administrative penalties following a determination that the goods are infringing.  | 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. |   |  | infringing.” TRIPS, like ACTA, does not talk about providing authorities with the authority to impose administrative penalties.   |
| Art. 14.6: Each Party shall provide that goods that have been determined by its competent authorities to be 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 to permit the release of the goods into the channels of commerce. In no event shall the competent authorities be authorized, except in exceptional circumstances, to permit the exportation of counterfeit or pirated goods or to permit such goods to be subject to other customs procedures. | Article 59. Remedies. Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.                          | Arts. 20.1, 20.2: 1. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination referred to in Article 19 (Determination as to Infringement) that the goods are infringing. In cases where such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder.<br>2. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce. | Art. 17.11.21 21. Each Party shall provide that:<br>(a) goods that have been found to be pirated or counterfeit by the competent authorities shall be destroyed, except in exceptional cases.<br>(b) in regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.<br>(c) in no event shall the competent authorities engage in, or permit, the re-exportation of counterfeit or pirated goods, nor shall they permit such goods to be subject to other customs procedures. | - Although both TPP and ACTA provide for an exception to destruction of the infringing goods as a form of remedy, TPP does not explicitly allow for disposal of such goods outside the channels of commerce. TRIPS does allow for disposal of the goods outside the channels of commerce (Art. 46). Additionally unlike ACTA, TPP and TRIPS further note that, except in exceptional cases, in no event shall the counterfeit or pirated goods be permitted to be exported or to be subject to other customs procedures. TRIPS also expressly prohibits the re-exportation of the infringing good in an unaltered state.<br><br>-TPP and Chile FTA are identical, except for one difference. Unlike that latter, the former allows competent authorities to authorize, in exceptional circumstances, “the |



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|  |  |   |  | exportation of counterfeit or pirated goods or to permit such goods to be subject to other customs procedures.” This is a rare example where the TPP provision is more lenient than the Chile FTA provision.               |
| Art. 14.7: Where an application fee, merchandise storage fee, or destruction fee is assessed in connection with border measures to enforce an intellectual property right, each Party shall provide that such fee shall not be set at an amount that unreasonably deters recourse to these measures. | N/A  | Art. 21: Each Party shall provide that any application fee, storage fee, or destruction fee to be assessed by its competent authorities in connection with the procedures described in this Section shall not be used to unreasonably deter recourse to these procedures.                   | Chile FTA does not have an equivalent section. | Essentially identical.   |
| Art. 14.8: A Party may exclude from the application of this Article (border measures), small quantities of goods of a non-commercial nature contained in traveler’s personal luggage.  | Article 60. De Minimis Imports. Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments. | Art. 14: 1. Each Party shall include in the application of this Section goods of a commercial nature sent in small consignments. 2. A Party may exclude from the application of this Section small quantities of goods of a non-commercial nature contained in travelers’ personal luggage. | Chile FTA does not have an equivalent section. | - Essentially identical for personal luggage exclusion. ACTA explicitly includes small consignments of commercial goods. TRIPS refers to small consignments but this appears to only apply to non-commercial consignments. |

## Rights Management Provisions

| TPP  | TRIPS | ACTA   | Chile FTA  | Comparison/Analysis  |
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| <p>Art. 4.10(a): each Party shall provide that 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,</p> <p>(i) knowingly removes or alters any rights management information;</p> <p>(ii) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or</p> <p>(iii) distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority,</p> <p>shall be liable and subject to the remedies set out in Article [12.12 Each Party shall provide for criminal procedures and 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. Such criminal procedures and penalties</p> | N/A   | <p>To protect electronic rights management information, each Party shall provide adequate legal protection and effective legal remedies against any person knowingly performing without authority any of the following acts knowing, or with respect to civil remedies, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related rights:</p> <p>(a) to remove or alter any electronic rights management information;</p> <p>(b) to distribute, import for distribution, broadcast, communicate, or make available to the public copies of works, performances, or phonograms, knowing that electronic rights management information has been removed or altered without authority.</p> | <p>Art. 17.7.6 In order to provide adequate and effective legal remedies to protect rights management information:</p> <p>(a) each Party shall provide that any person who without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related right,</p> <p>(i) knowingly removes or alters any rights management information;</p> <p>(ii) distributes or imports for distribution rights management information knowing that the rights management information has been altered without authority; or</p> <p>(iii) distributes, imports for distribution, broadcasts, communicates, or makes available to the public copies of works or phonograms, knowing that rights management information has been removed or altered without authority,</p> <p>shall be liable, upon the suit of any injured person, and subject to the remedies in Article 17.11(5). Each Party shall provide for application of criminal procedures and remedies at least in cases where acts prohibited in the subparagraph are done</p> | <p>-ACTA only requires adequate legal protection and remedies, while TPP requires criminal penalties when infringement is for profit.</p> <p>-TPP and Chile FTA are essentially identical. However, subsection (a)(iii) of TPP adds “performances” within its purview. Additionally, TPP provides for criminal liability for activities done for “private financial gain” which, is a phrase not present in the Chile FTA.</p> |

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| shall include the application to such activities of the remedies and authorities listed in subparagraphs (a), (b) and (f) of Article [15.5] as applicable to infringements, mutatis mutandis.  |     |  | willfully and for purposes of commercial advantage. A Party may exempt from criminal liability prohibited acts done in connection with a nonprofit library, archive, educational institution, or broadcasting entity established without a profit-making purpose.   |  |
| Art. 4.10(b) each Party shall confine exceptions and limitations to measures implementing subparagraph (a) 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. | N/A | Art. 27.8: In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraphs 5 and 7, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraphs 5, 6, and 7. The obligations set forth in paragraphs 5, 6, and 7 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law. | <p>Art. 17.7.5(d)(vii) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers, and producers of phonograms in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, protected by copyright and related rights:</p> <p>(d) Each Party shall confine limitations and exceptions to measures implementing subparagraphs (a) and (b) to certain special cases that do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures. In particular, each Party may establish exemptions and limitations to address the following situations and activities in accordance with subparagraph (e):</p> <p>(vii) lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement,</p> | <p>-TPP limits exceptions to those carried out by people working for the government for law-enforcement-related government purposes.</p> <p>-TPP and Chile FTA are essentially identical except, the former adds "essential security" within the purview of the exception.</p> |

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| <p>Art. 4.10(c) Rights management information means:</p> <p>(i) information that identifies a work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;</p> <p>(ii) information about the terms and conditions of the use of the work, performance, or phonogram; or</p> <p>(iii) any numbers or codes that represent such information,</p> <p>when any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance or phonogram, to the public.</p> | N/A | <p>Art. 27 footnote 16: For the purposes of this Article, rights management information means:</p> <p>(a) information that identifies the work, the performance, or the phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;</p> <p>(b) information about the terms and conditions of use of the work, performance, or phonogram; or (c) any numbers or codes that represent the information described in (a) and (b) above; when any of these items of information is attached to a copy of a work, performance, or phonogram, or appears in connection with the communication or making available of a work, performance, or phonogram to the public.</p> | <p>Art. 17.7.6(b) (b) Rights management information means:</p> <p>(i) information which identifies a work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;</p> <p>(ii) information about the terms and conditions of the use of the work, performance, or phonogram; and</p> <p>(iii) any numbers or codes that represent such information,</p> <p>when any of these items is attached to a copy of the work, performance, or phonogram or appears in conjunction with the communication or making available of a work, performance, or phonogram to the public. Nothing in paragraph 6(a) requires the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the owner's work, performance, or phonogram or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.</p> | <p>-TPP and ACTA are essentially identical.</p> <p>-TPP and Chile FTA are essentially identical. However, TPP is concerned with rights management information that “appears <i>in connection</i> with the communication or making available of a work” while the Chile FTA is concerned with rights management information that “appears <i>in conjunction</i> with the communication or making available of a work.” The last sentence of Chile FTA art. 17.7.6(b) is reflected in TPP art. 4.10(d).</p> |
| <p>Art. 4.10(d) For greater certainty, nothing in this paragraph shall obligate a Party to require the owner of any right in the work, performance, or phonogram to</p>  | N/A |   | <p>Art. 17.7.6(b) (b) Rights management information means:</p> <p>(i) information which identifies a work, performance, or</p>   | <p>-ACTA does not have an equivalent section.</p> <p>-The last sentence of Chile FTA art. 17.7.6(b) is functionally identical to</p>  |

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| attach rights management information to copies of the work, performance, or phonogram, or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public. |  |  | <p>phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;</p> <p>(ii) information about the terms and conditions of the use of the work, performance, or phonogram; and</p> <p>(iii) any numbers or codes that represent such information,</p> <p>when any of these items is attached to a copy of the work, performance, or phonogram or appears in conjunction with the communication or making available of a work, performance, or phonogram to the public. Nothing in paragraph 6(a) requires the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the owner's work, performance, or phonogram or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.</p> | TPP art. 4.10(d). |
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