

Bilateralism and Plurilateralism

Bilateralism, eg. United States - Singapore Free Trade Agreement

- **CHAPTER 16 : INTELLECTUAL
PROPERTY RIGHTS**

Preamble

The Government of the United States and the
Government of the Republic of Singapore

- Recognizing their longstanding friendship and important trade and investment relationship;
- Reaffirming their rights, obligations and undertakings under the Marrakesh Agreement Establishing the World Trade Organization, and other multilateral, regional, and bilateral agreements and arrangements to which they are both Parties;

ARTICLE 16.1.2 : GENERAL PROVISIONS

- (a) Each Party shall ratify or accede to the following agreements:
 - (i) the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);
 - (ii) the International Convention for the Protection of New Varieties of Plants (1991) (UPOV Convention);
 - (iii) the WIPO Copyright Treaty (1996);
 - (iv) the WIPO Performances and Phonograms Treaty (1996); and
 - (v) the Patent Cooperation Treaty (1984).

ARTICLE 16.1.2 : GENERAL PROVISIONS

- b) Each Party shall give effect to:
 - (i) Articles 1 through 6 of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (1999), adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization; and
 - (ii) the Trademark Law Treaty.

ARTICLE 16.2.2 : GENERAL PROVISIONS

- (c) Each Party shall make best efforts to ratify or accede to:
 - (i) the Hague Agreement Concerning the International Registration of Industrial Designs (1999); and
 - (ii) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989).

ARTICLE 16.2 : TRADEMARKS

- Each Party shall provide that trademarks shall include service marks, collective marks, and certification marks, and may include geographical indications.
- Neither Party shall require, as a condition of registration, that signs be visually perceptible, but each Party shall make best efforts to register scent marks.
- Each Party shall afford an opportunity for the registration of a trademark to be opposed.

ARTICLE 16.2 : TRADEMARKS, INCLUDING GEOGRAPHICAL INDICATIONS

2. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services that are related to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion.

Article 16.2

- Article 6*bis* of the Paris Convention shall apply, *mutatis mutandis*, to goods or services that are **not similar** to those identified by a **well-known** trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark and provided that the interests of the owner of the trademark are likely to be damaged by such use.

ARTICLE 16.3 : DOMAIN NAMES ON THE INTERNET

2. Each Party shall require that registrants of domain names in its ccTLD are subject to a dispute resolution procedure, modeled along the same lines as the principles set forth in ICANN Uniform Domain Name Dispute Resolution Policy (ICANN UDRP), to address and resolve disputes related to the bad-faith registration of domain names in violation of trademarks.

ARTICLE 16.4 : OBLIGATIONS COMMON TO COPYRIGHT AND RELATED RIGHTS

1. Each Party shall provide that authors, performers, and producers of phonograms and their successors in interest have the right to authorize or prohibit all reproductions, in any manner or form, permanent or temporary (including temporary storage in electronic form).

Copyright Art 16.2 (a)

...each Party shall provide to authors, performers, producers of phonograms and their successors in interest the exclusive right to authorize or prohibit the communication to the public of their works, performances, or phonograms, by wire or wireless means, including the making available to the public of their works, performances, and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

Copyright Art 16.2 (b)

(b) Neither Party shall permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder in the subject matter of the signal.

Copyright Art 16.3

Each Party shall provide to authors, performers, producers of phonograms, and their successors in interest the exclusive right of authorizing the making available to the public of the original and copies of their works and phonograms through sale or other transfer of ownership.

Copyright Art 16.4

Each Party shall provide that where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death;

Article 16.4.7

- (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures ...each Party shall provide that any person who:
- (i) knowingly, ... circumvents...any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter;

which:

- (A) are advertised..for the purpose of circumvention, or
(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 purpose of enabling or facilitating the circumvention of any effective technological measure;

shall be liable and subject to the remedies provided for in Article 16.9.5.

Article 16.4.7

(a) ...each Party shall provide that any person who:

...

((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, which:

(A) are advertised..for the purpose of circumvention ..., or

(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 purpose of enabling or facilitating the circumvention of any effective technological measure;

shall be liable and subject to the remedies provided for in Article 16.9.5.

ARTICLE 16.5 : OBLIGATIONS PERTAINING TO RELATED RIGHTS

2. Each Party shall provide to performers the exclusive right to authorize or prohibit:
 - (a) the communication to the public of their unfixed performances, except where the performance is already a broadcast performance, and
 - (b) the fixation of their unfixed performances.

ARTICLE 16.6.1 : PROTECTION OF ENCRYPTED PROGRAM-CARRYING SATELLITE SIGNALS

Each Party shall make it:

- (a) a criminal offense to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal;

ARTICLE 16.7 : PATENTS

1. Each Party shall make patents available for any invention, whether a product or a process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application.

Art. 16.7.6 Compulsory Licensing

Neither Party shall permit the use¹⁶⁻¹¹ of the subject matter of a patent without the authorization of the right holder except in the following circumstances:

- (b) in the case of public non-commercial use or in the case of a national emergency or other circumstances of extreme urgency, provided that:
 - (i) such use is limited to use by the government or third parties authorized by the government;

Art.16.7

7. Each Party, at the request of the patent owner, shall extend the term of a patent to compensate for unreasonable delays that occur in granting the patent.

For the purposes of this paragraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than four years from the date of filing of the application with the Party, or two years after a request for examination of the application has been made, whichever is later, provided that periods attributable to actions of the patent applicant need not be included in the determination of such delays.

Art.16.7

8. Where a Party provides for the grant of a patent on the basis of an examination of the invention conducted in another country, that Party, at the request of the patent owner, may extend the term of a patent for up to five years to compensate for the unreasonable delay that may occur in the issuance of the patent granted by such other country where that country has extended the term of the patent based on such delay.

ARTICLE 16.8 : CERTAIN REGULATED PRODUCTS

1. If a Party requires the submission of information concerning the safety and efficacy of a pharmaceutical or agricultural chemical product prior to permitting the marketing of such product, the Party shall not permit third parties not having the consent of the party providing the information to market the same or a similar product on the basis of the approval granted to the party submitting such information for a period of at least five years from the date of approval for a pharmaceutical product and ten years from the date of approval for an agricultural chemical product.

ARTICLE 16.9 : ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

15. Each Party shall provide that:

- (a) its judicial authorities have the authority to require the plaintiff to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff's right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

ARTICLE 16.9 : ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

15. Each Party shall provide that:

(b) in the event that its judicial or other authorities appoint experts, technical or otherwise, that must be paid by the plaintiff, such costs should be closely related, *inter alia*, to the quantity of work to be performed and should not unreasonably deter recourse to such relief.

Art 16.9

21. Each Party shall provide 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 (i) significant willful infringements of copyright or related rights that have no direct or indirect motivation of financial gain, as well as (ii) willful infringements for purposes of commercial advantage or financial gain.

ARTICLE 16.10 : TRANSITIONAL PROVISIONS

Each Party shall implement the obligations of this Chapter within the following periods:

- (a) Each Party shall ratify or accede to the UPOV Convention and give effect to the obligations in paragraph 4 of Article 16.4 within six months of the date of entry into force of this Agreement or December 31, 2004, whichever date is earlier;
- (b) each Party shall ratify or accede to the agreements listed in paragraph 2(a) of Article 16.1 (except for the UPOV Convention) and give effect to Articles 16.4 and 16.5 (except for paragraph 4 of Article 16.4) within one year of the date of entry into force of this Agreement; and
- (c) each Party shall implement each of the other obligations of this Chapter within six months of the date of entry into force of this Agreement.

Plurilateral, eg Trans-Pacific Partnership Agreement (TPPA)

Secret TPP treaty: Advanced Intellectual Property chapter for all 12 nations with negotiating positions

WikiLeaks release: November 13, 2013

keywords: treaty, trademark, patent, copyright, enforcement measures, censorship, geographical indications, pharmaceuticals, generics, circumvention, DRM, pay television, encryption. CDA, DMCA

restraint: This Document Contains TPP CONFIDENTIAL Information
MODIFIED HANDLING AUTHORIZED

title: Trans-Pacific Partnership Agreement:
Intellectual Property [Rights] Chapter
Consolidated Text

date: August 30, 2013

group: Trans-Pacific Partnership

author: Trans-Pacific Partnership IP group country negotiators

link: <http://wikileaks.org/tpp>

pages: 95

The Trans-Pacific Partnership (TPP)

- is a regional regulatory and investment treaty. As of 2014, twelve countries throughout the Asia-Pacific region have participated in negotiations on the TPP: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam.

Article 18.18: Types of Signs Registrable as Trademarks

- No Party shall require, as a condition of registration, that a sign be visually perceptible, nor shall a Party deny registration of a trademark only on the ground that the sign of which it is composed is a sound. Additionally, each Party shall make best efforts to register scent marks.

Article 18.28: Domain Names

1. In connection with each Party's system for the management of its country-code top-level domain (ccTLD) domain names, the following shall be available:

(a) an appropriate procedure for the settlement of disputes, based on, or modelled along the same lines as, the principles established in the *Uniform Domain-Name Dispute-Resolution Policy*, as approved by the Internet Corporation for Assigned Names and Numbers (ICANN) or that:

(i) is designed to resolve disputes expeditiously and at low cost;

(ii) is fair and equitable;

(iii) is not overly burdensome; and

(b) online public access to a reliable and accurate database of contact information concerning domain name registrants,

Article 18.63: Term of Protection for Copyright and Related Rights

Each Party shall provide that in cases in which the term of protection of a work, performance or phonogram is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death

Article 18.77: Criminal Procedures and Penalties

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale. In respect of wilful copyright or related rights piracy, “on a commercial scale” includes at least:

- acts carried out for commercial advantage or financial gain; and
- significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.

EU-US Transatlantic Trade and Investment Partnership (TTIP)

IP- EU position paper, 20 March 2015 Geographical indications

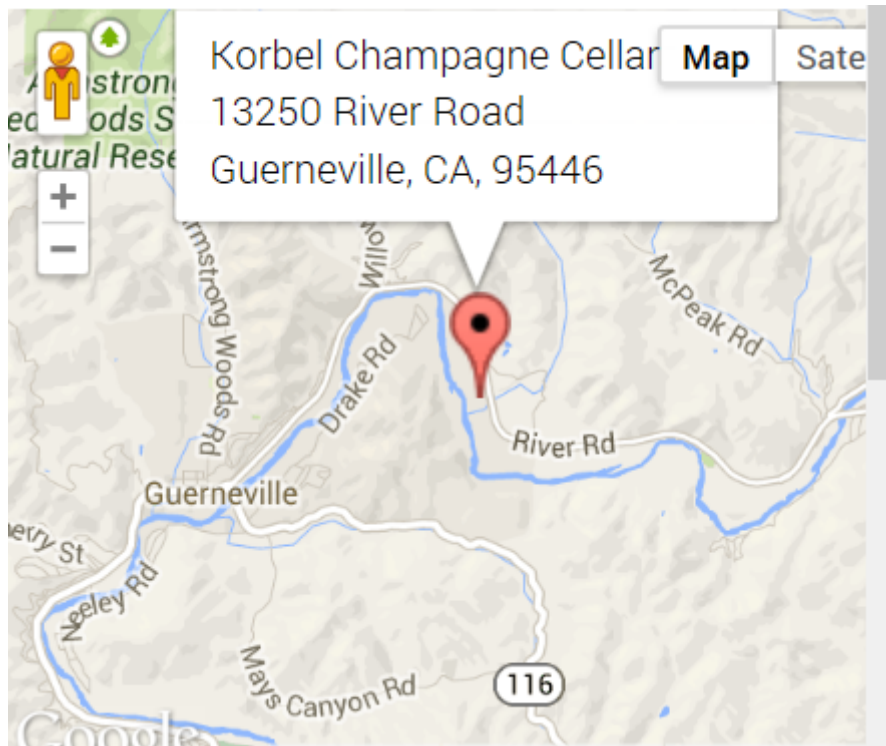
The EU is seeking:

- Rules guaranteeing appropriate level of protection for EU GIs;
- Administrative enforcement against the misuse of EU GIs;
- Establishment of list(s) of GI names, to be protected directly through the agreement.
- Exclusive protection for the 17 EU wine names included in Annex II of the EU and the U.S. agreement concluded in 2006 on "trade in wine";
- Protection for additional EU GI spirits names.

New World v Old World



California Champagne



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