SUB-SECTION 5

Enforcement – criminal remedies

ARTICLE 14.58

Criminal procedures and penalties

1. 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[1].

2. Each Party shall treat wilful importation or exportation of counterfeit trademark goods or pirated copyright goods carried out on a commercial scale as unlawful activities subject to criminal penalties.[2]

3. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation[3] and domestic use, in the course of trade and on a commercial scale, of a label or packaging:[4]

(a) to which a trademark has been applied without authorisation that is identical to, or cannot be distinguished from, a trademark registered in its territory; and

(b) that is intended to be used in the course of trade on goods that are identical to goods for which that trademark is registered.

---

1 For the purposes of this Sub-Section, acts carried out on a commercial scale include at least those carried out as commercial activities for commercial advantage or financial gain.

2 The Parties understand that a Party may comply with its obligation under this paragraph by providing that distribution or sale of counterfeit trademark goods or pirated copyright goods carried out on a commercial scale is an unlawful activity subject to criminal penalties.

3 A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

4 A Party may comply with its obligations under this paragraph by providing for criminal procedures and penalties to be applied to attempts to commit a trademark offence.

4. Recognising the need to address the unauthorised copying[1] of a cinematographic work from a performance in a movie theatre that causes significant harm to a right holder in the market for that work, and recognising the need to deter such harm, each Party shall adopt or maintain measures, which shall at a minimum include, but need not be limited to, appropriate criminal procedures and penalties.

5. With respect to the offences for which this Article requires a Party to provide for criminal procedures and penalties, each Party shall ensure that criminal liability for aiding and abetting is available under its law.

6. With respect to the offences described in paragraphs 1 to 5, each Party shall provide the following:

(a) Its judicial or other 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 assets derived from, or obtained through the alleged infringing activity. If a Party requires identification of items subject to seizure as a prerequisite for issuing a judicial order referred to in this subparagraph, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure.

(b) The judicial authorities of a Party have the authority in accordance with the laws and regulations of such Party to order the forfeiture of any assets derived from or obtained through the infringing activity.

(c) The judicial authorities of a Party have the authority in accordance with the laws and regulations of such Party to order the forfeiture or destruction of:

(i) all counterfeit trademark goods or pirated copyright goods;

---

1 For the purposes of this Article, a Party may treat the term "copying" as synonymous with "reproduction".