SUBSECTION 2
CIVIL REMEDIES[47]

Article 11.59: Fair and Equitable Procedures

1. Each Party shall make available to right holders[48] civil judicial procedures concerning the enforcement of any intellectual property right covered by this Chapter. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. All parties to the procedures 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 procedures shall provide a means to identify and protect confidential information, unless this would be contrary to the Party's constitutional requirements.

2. Each Party may permit the use of alternative dispute resolution procedures to resolve civil disputes concerning intellectual property rights.

Article 11.60: Damages

1. Each Party shall provide[49] that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities 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 right holder's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. In determining the amount of damages referred to in paragraph 1, a Party's judicial authorities shall have the authority to consider, among other things, any legitimate measure of value the right holder submits.[50]

3. In cases of infringement of copyright or related rights and trademark counterfeiting, the judicial authorities shall have the authority to order the infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity to pay the right holder the infringer's profits that are attributable to the infringement.[51]

Article 11.61: Court Costs and Fees

Each Party shall provide that its judicial authorities, where appropriate, have the authority to order[52], at the conclusion of civil judicial proceedings concerning the infringement of at least copyright or related rights and trademarks, that the prevailing party is 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.

Article 11.62: Destroying Infringing Goods and Materials and Implements

1. Each Party shall provide that in civil judicial procedures its judicial authorities have the authority at least at the right holder's request, to order that pirated copyright goods and counterfeit trademark goods be destroyed, except in exceptional circumstances, without compensation of any sort.[53]

---

[47] A Party may comply with the obligations under this Subsection to provide civil judicial procedures concerning the enforcement of geographical indications in accordance with footnote 4 of Article 23 of the TRIPS Agreement.

[48] For the purposes of this Article, "right holder" includes federations and associations that have legal standing to assert such rights.

[49] A Party may also provide that the right holder may not be entitled to any of the remedies set out in paragraphs 1 and 3 if there is a finding of non-use of a trademark. For greater certainty, there is no obligation for a Party to provide for the possibility of any of the remedies in paragraphs 1 and 3 to be ordered in parallel.

[50] For greater certainty, a Party's judicial authorities may have the authority to consider the value of the infringed goods or services measured by their market price, in determining the amount of damages, where appropriate.

[51] A Party may comply with this paragraph through presuming those profits to be the damages referred to in paragraph 1.

[52] The judicial authorities of a Party may have the authority to make such orders through separate proceedings after the conclusion of the civil judicial proceedings.

[53] For greater certainty, the Parties understand that while judicial authorities have the authority to order the destruction of the goods, they may also have the authority to order, without compensation of any sort, the disposal of such goods outside the channels of commerce in such a manner as to avoid any harm caused to right holders, instead of destruction.