

CPTPP - CHANGES AND APPROACHES TO INTELLECTUAL PROPERTY LITIGATION

18.71 Duty to establish procedures for the enforcement of IP rights

- The treaty establishes a duty to improve, streamline and simplify procedures aimed at preventing and prosecuting intellectual property infringements.

18.72 Presumptions regarding IP rights

- A duty is incorporated in order to extend to related rights the presumption of ownership already contemplated in our legislation for intellectual works.
- New presumptions of validity are established with respect to trademark and patent registrations.

18.74 Indemnity valuation rules

- The need to contemplate special compensation mechanisms in civil lawsuits for intellectual property infringement is reaffirmed, mechanisms already contemplated by national legislation, such as the rules for calculating the damages caused and the possibility of opting for a lump sum compensation in matters of copyright and trademark counterfeiting.

18.75 Precautionary injunctions

- The treaty contemplates the duty to act expeditiously in the exercise of precautionary measures in the field of intellectual property. In addition, the requirements currently contemplated in our legislation for such measures and the type of measures that may be requested are ratified, the latter being extended to the case of trademark counterfeiting, for which the withholding of documentary evidence related to the alleged infringement may be requested as a precautionary measure.

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19.76 Border Measures

- The treaty contemplates the need for border measures to stop the clearance of goods infringing intellectual property rights, in a manner very similar to that already enshrined in Chilean legislation.
- In addition, it contemplates the possibility of establishing powers for the competent authorities to inform the right holder of specified information on the detained goods, such as the names and addresses of the consignors, exporters, consignees or importers, a description of the goods, the quantity of the goods, and the country of origin of the goods.

18.77 Criminal Penalties for Counterfeiting

- The treaty considers as counterfeiting acts against copyrights not only those conducts carried out with a profit motive, but also those significant acts that, without a profit motive, have a significant impact on the position of the copyright holder in the market. In addition, in the area of trademark counterfeiting, it establishes the duty to criminally punish not only the perpetrator of counterfeiting offenses, but also those who assist or induce the commission of such offenses.
- In addition, the treaty contemplates the need for the penalties associated with counterfeiting offenses to take into account the seriousness of the circumstances, such as risks to health or safety associated with the crime committed. It also contemplates the need to expand the powers of seizure and retention in relation to counterfeiting offenses, including powers to seize not only the objects of the offense and the means of committing it, but also documentary evidence relating to the alleged offense, and even assets derived from or obtained as a result of the offense.
- Finally, the treaty provides that the competent authority must be allowed to initiate legal action against counterfeiting offenses on its own initiative, without requiring a formal request from the right holder and/or any other third party.

18.78 Trade Secrets: Criminal Procedures and Penalties

- The treaty establishes the duty to ensure legal means to prevent the unauthorized disclosure and/or use of trade secrets. In addition, the need to provide for specific criminal penalties to sanction the infringement of trade secrets is contemplated.

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