

# TPP-ACTA Comparison Table, v. 1

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## General Provisions

TPP	ACTA	Comparison/Analysis
<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> <ul style="list-style-type: none"> <li>(a) Patent Cooperation Treaty (1970), as amended in 1979;</li> <li>(b) Paris Convention for the Protection of Industrial Property (1967);</li> <li>(c) Berne Convention for the Protection of Literary and Artistic Works (1971);</li> <li>(d) Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);</li> <li>(e) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989);</li> <li>(f) Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), as amended in 1980;</li> <li>(g) International Convention for the Protection of New Varieties of Plants (1991) (UPOV Convention);</li> <li>(h) Singapore Treaty on the Law of Trademarks (2006);</li> <li>(i) WIPO Copyright Treaty (1996); and</li> <li>(j) WIPO Performances and Phonograms Treaty (1996).</li> </ul> <p>4. Each Party shall notify the WTO of its acceptance of the Protocol amending the TRIPS Agreement done at Geneva on December 6, 2005.</p> <p>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:</p> <ul style="list-style-type: none"> <li>(a) Patent Law Treaty (2000); and</li> <li>(b) Hague Agreement Concerning the International Registration of Industrial Designs (1999).</li> </ul>	<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>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>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</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> <ul style="list-style-type: none"> <li>(a) procedures available under its law for enforcing intellectual property rights, its</li> </ul>	<p>Essentially identical, although TPP explicitly mentions internet publication as an option.</p>

<p>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>competent authorities responsible for such enforcement, and contact points available for assistance;</p> <p>(b) relevant laws, regulations, final judicial decisions, and administrative rulings of general application pertaining to the enforcement of intellectual property rights; and</p> <p>(c) its efforts to ensure an effective system of enforcement and protection of intellectual property rights.</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. 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>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>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>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>Identical</p>

## Scope

TPP	ACTA	Comparison/Analysis
<p>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.</p>	<p>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.</p>	<p>Essentially identical, though ACTA gives some additional deference to the sovereignty of its signatories.</p>
<p>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</p>		<p>ACTA does not have an equivalent section.</p>

<p>rights and any benefits derived from such rights.</p> <p>8. A Party may derogate from paragraph [7] in relation to its judicial and administrative 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>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 Chapter.</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>Although likely functionally the same, TPP is explicitly applied to all existing protected intellectual property, while ACTA is not.</p>
<p>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.</p>	<p>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.</p>	<p>Neither ACTA nor TPP requires a country to restore copyright protection to a work that is in the public domain in that country.</p>

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

TPP	ACTA	Comparison/Analysis
<p>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.</p>		<p>ACTA does not have an equivalent section.</p>
<p>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.</p>		<p>ACTA does not have an equivalent section.</p>
<p>Art. 16.1: Each Party shall ensure that enforcement procedures, to the 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,</p>	<p>Art. 27.1: Each Party shall ensure that enforcement procedures, to 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</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>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>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>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>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>TPP specifically deals with cooperation between "service providers" and "copyright owners" while ACTA deals with "cooperative efforts within the business community".</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: ... (B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of 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.</p>		<p>ACTA does not have an equivalent section. See entries on Side Letter 1, below.</p>
<p>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.</p>		<p>ACTA does not have an equivalent section. See entries on Side Letter 1, below.</p>
<p>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</p>		<p>ACTA does not have an equivalent section. See entries on Side Letter 1, below.</p>

<p>restore the material online unless the person giving the original effective notification seeks judicial relief within a reasonable time.</p>		
<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-notification that substantially complies with the elements listed in section (b) of this letter.</p>		<p>TPP contains detailed notification and counter-notification procedures for rightholders, ISPs and subscribers. ACTA does not have an equivalent section.</p>
<p>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 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 may be provided electronically, that includes substantially the following: 1. the identity, address, telephone number, and electronic mail address of the complaining party (or its authorized agent);</p>		<p>ACTA does not have an equivalent section. However, the DMCA contains similar requirements:</p> <p>(c)(3) ELEMENTS OF NOTIFICATION.— (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 the following: ... (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>Side letter 1 (a) 2. information reasonably sufficient to enable the service provider to identify the copyrighted work(s) claimed to have been infringed;</p>		<p>ACTA does not have an equivalent section. However, the DMCA contains similar requirements:</p> <p>(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>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;</p>		<p>ACTA does not have an equivalent section. However, the DMCA contains similar requirements:</p> <p>(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>

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;		<p>ACTA does not have an equivalent section. However, the DMCA contains similar requirements:</p> <p>(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>
Side letter 1 (a) 5. a statement that the information in the notice is accurate;		<p>ACTA does not have an equivalent section. However, the DMCA contains similar requirements:</p> <p>(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>
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		<p>ACTA does not have an equivalent section. However, the DMCA contains similar requirements:</p> <p>(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>
Side letter 1 (a) 7. the signature of the person giving notice.		<p>ACTA does not have an equivalent section. However, the DMCA contains similar requirements:</p> <p>(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>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>		<p>ACTA does not have an equivalent section. However, the DMCA contains similar requirements:</p> <p>(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</p>

		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.
Side letter 1 (b)2. the identity of the material that has been removed or to which access has been disabled;		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.
Side letter 1 (b)3. the location at which the material appeared before it was removed or access to it was disabled;		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.
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;		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.
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;		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.

Side letter 1 (b)6. a statement that the subscriber will accept service of process in any such suit; and		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.
Side letter 1 (b)7. the signature of the subscriber.		ACTA does not have an equivalent section. However, the DMCA contains similar requirements:  (g)(3) (A) A physical or electronic signature of the subscriber.

### Technological Protection Measures

TPP	ACTA	Comparison/Analysis
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:	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.	Essentially identical.
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	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: (a) to the extent provided by its law: (i) the unauthorized circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know	Unlike ACTA, the TPP does not require that unauthorized circumvention be carried out knowingly or with reasonable grounds to know.
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: (A) are promoted, advertised, or marketed by that person, or by another person acting in concert with that person and with	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: (a) to the extent provided by its law: (ii) the offering to the public by marketing of a device or product, including computer	Unlike ACTA, TPP adds components to the list of banned circumvention products. 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



<p>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 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>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:  (i) is primarily designed or 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>services for circumvention of TPM, or is an accomplice of someone providing such products or services.</p>
<p>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, 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).</p>		<p>ACTA does not have an equivalent section.</p>
<p>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.</p>	<p>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.</p>	<p>Both ACTA and TPP make circumvention a distinct cause of action, independent of infringement.</p>
<p>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):  (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 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;  (ii) noninfringing good faith activities,</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.</p>	<p>ACTA gives a country free reign to create exceptions it finds reasonable, while TPP explicitly limits the possible exceptions.</p>

<p>carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfix 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 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>(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</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.</p>	<p>ACTA gives a country free reign to create exceptions it finds reasonable, while TPP explicitly limits the possible exceptions.</p>

<p>the circumvention of effective 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>(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>	<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 as encryption or scrambling, or a copy control mechanism, which achieves the objective of protection.</p>	<p>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>

## Criminal Enforcement

TPP	ACTA	Comparison/Analysis
<p>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:</p> <p>(a) significant willful copyright or related rights infringements that have no direct or indirect motivation of financial gain; and</p> <p>(b) willful infringements for purposes of commercial advantage or private financial gain.</p> <p>Each Party shall treat willful importation or exportation of counterfeit or pirated goods as unlawful activities subject to criminal penalties.</p>	<p>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.</p>	<p>ACTA defines piracy on a commercial scale to include “commercial activities for direct or indirect economic or commercial advantage”. TPP, on the other hand, defines piracy on a commercial scale to 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>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:</p> <p>(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</p> <p>(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</p> <p>(c) counterfeit documentation or packaging for items of the type described in subparagraph (b).</p>	<p>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:</p> <p>(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</p> <p>(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.</p>	<p>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.</p>
<p>Art. 15.3: Each Party shall also 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.</p>	<p>Art. 23.3: A Party may provide 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.</p>	<p>TPP prohibits unauthorized transmission or copying of a “motion picture or other audiovisual work” while ACTA prohibits “unauthorized copying of cinematographic works”.</p>
<p>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.</p>	<p>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.</p>	<p>Essentially identical.</p>

<p>Art. 15.5(a): With respect to the offences described in Article 15.[1]-[4] above, each Party shall provide:</p> <p>(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;</p>	<p>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<sup>12</sup> sufficiently high to provide a deterrent to future acts of infringement, consistently with the level of penalties applied for crimes of a corresponding gravity.</p>	<p>Both TPP and ACTA prescribe both “imprisonment and 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”.</p>
<p>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;</p>	<p>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.</p>	<p>TPP requires seizure of “any assets traceable to the infringing activity” while ACCTA 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”.</p>
<p>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;</p>	<p>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.</p>	<p>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”.</p>
<p>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</p>	<p>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 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</p>	<p>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 exception, unlike ACTA, TPP does not explicitly allow goods to be “disposed of outside the channels of commerce”.</p>

	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.	
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;	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.	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”.
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.	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:  (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.	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. 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.	Essentially identical.
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.	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	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.

expression, fair process, and privacy.

## Provisional Measures

TPP	ACTA	Comparison/Analysis
<p>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>	<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 a decision without undue delay.</p>	<p>ACTA 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.</p>
<p>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.</p>	<p>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.</p>	<p>Essentially identical.</p>

## Civil and Administrative Procedures and Remedies

TPP	ACTA	Comparison/Analysis
<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>ACTA does not have an equivalent section.</p>
<p>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.</p>	<p>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.</p>	<p>Unlike ACTA, the injunctive relief under TPP is not explicitly applied to third parties.</p>
<p>Art. 12.3(a)(i) Each Party shall provide that:            (a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder:            (i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement, and</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>Unlike ACTA, TPP does not require the infringer to have "knowingly or with reasonable grounds to know, engaged in infringing activity". However, both TPP and ACTA 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>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).</p>	<p>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.</p>	<p>ACTA allows judicial authorities to base damages on the infringer's profits; TPP does not. However, both allow the judicial authorities to order the infringer to pay the profits to the rights holder.</p>
<p>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.</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>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.</p>
<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. 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:  (a) pre-established damages; or  (b) presumptions for determining the amount of damages sufficient to compensate the right holder for the harm caused by the infringement; or  (c) at least for copyright, additional damages.</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>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. 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>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>Art. 12.7(a): Each Party shall provide that in civil judicial proceedings: (a) at the right holder’s request, goods that have been found to be pirated or counterfeit shall be destroyed, except in exceptional circumstances;</p>	<p>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.</p>	<p>Although both TPP and ACTA require the destruction of pirated or counterfeit goods at the request of the right holder, unlike ACTA, 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).</p>
<p>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 infringements; and</p>	<p>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.</p>	<p>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 <i>predominantly</i> so used. Also unlike 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>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.</p>	<p>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.</p>	<p>Unlike 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>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</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</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>services or in their channels of distribution, and to provide this information to the right holder.</p>	<p>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. 12.9: Each Party shall provide that its judicial authorities have the authority to:  (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  (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>		<p>TPP interferes with the sovereignty of signatories by mandating judicial procedures. ACTA does not have an equivalent section.</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. 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>Identical.</p>

<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>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>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>
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## Special Requirements Related to Border Enforcement

TPP	ACTA	Comparison/Analysis
<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. 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>TPP 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."</p>
<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>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>TPP bases its 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.</p>

<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. 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>Essentially identical.</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. 22: Without prejudice to a Party's laws pertaining to the privacy or confidentiality of information:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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 manufacturer of the goods, to assist in the determination referred to in Article 19 (Determination as to Infringement);</li> <li>(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<sup>[8]</sup> 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</li> </ul>	<p>TPP does not provide any protections for privacy or confidentiality of information.</p>

	known, the country of origin of the goods, and the name and address of the manufacturer of the goods.	
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.	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.	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”.
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 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.	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.	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 infringing”.
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.	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. 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.	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. Additionally unlike ACTA, TPP further notes 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.

<p>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.</p>	<p>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.</p>	<p>Essentially identical.</p>
<p>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.</p>	<p>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.</p>	<p>Essentially identical for personal luggage exclusion. ACTA explicitly includes small consignments of commercial goods.</p>

## Rights Management Provisions

TPP	ACTA	Comparison/Analysis
<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, (i) knowingly removes or alters any rights management information; (ii) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or (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, 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>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: (a) to remove or alter any electronic rights management information; (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>ACTA only requires adequate legal protection and remedies, while TPP requires criminal penalties when infringement is for profit.</p>
<p>Art. 4.10(b) each Party shall confine exceptions and limitations to measures implementing subparagraph (a) to lawfully authorized activities carried out</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</p>	<p>TPP limits exceptions to those carried out by people working for the government for law-enforcement-related government purposes.</p>



<p>by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes.</p>	<p>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>Art. 4.10(c) Rights management information means:  (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;  (ii) information about the terms and conditions of the use of the work, performance, or phonogram; or  (iii) any numbers or codes that represent such information, 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>	<p>Art. 27 footnote 16: For the purposes of this Article, rights management information means: (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; (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>Essentially identical</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 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>		<p>ACTA does not have an equivalent section.</p>