

Jamaica Intellectual Property Rights Agreement

AGREEMENT CONCERNING THE PROTECTION AND ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF JAMAICA

The Government of the United States of America and the Government of Jamaica (hereinafter referred to collectively as "Parties" and individually as "Party"), to promote close and productive economic, cultural and other relations and desiring to facilitate the expansion of trade on a non-discriminatory basis, agree to provide adequate and effective protection and enforcement of intellectual property rights and to ensure that measures to enforce such rights do not themselves become barriers to legitimate trade, as set forth in this Agreement.

Article One Nature and Scope of Obligations

1. Each Party agrees to provide in accordance with provisions of this Agreement adequate and effective protection and enforcement of intellectual property rights in patents, trademarks, copyrights, trade secrets, and layout designs for integrated circuits.
2. Each Party shall, at a minimum, and without prejudice to its right to provide more comprehensive protection,
 - a. Adhere to and implement at national law the obligations of:
 - i. the Paris Convention for the Protection of Industrial Property (Stockholm, 1967) ("Paris Convention");
 - ii. the Berne Convention for the Protection of Literary and Artistic Works (Paris, 1971) ("Berne Convention"). However, the Parties shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of the Berne Convention or of any rights derived therefrom;
 - iii. the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (1971);
 - iv. the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974); and
 - b. If a Party has not acceded to the specified text of any such Conventions on or before the date of entry into force of this Agreement, it shall make every effort to accede.
 - c. Observe the following provisions.

Article Two National Treatment

Each Party shall provide no less favorable treatment to nationals of the other Party than it provides to its own nationals with respect to laws, regulations and practices implementing the provisions of this Agreement.

Article Three More Extensive Protection

The Parties may implement in their domestic law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement.

Article Four Copyright

1. Each Party shall protect the works covered by Article 2 of the Berne Convention, including any other works, now known or later developed, which embody original expression within the meaning of Article 2 of the Berne Convention. For example: p

a. all type ^{mp}puter pr gra are literary work within the ^{me}aning the Berne C nventi n and are pr te ted a u h; and

b. Ile ti n r ^{mp}ilati n data r ther ^{ma}terial, whether in ^{ma}chine readable r ther r^m, whi h, by rea n the ele ti n r arrange^{me}nt their ntent n titute intelle tual reati n , are pr te ted a Ile ti n r ilati n work . Su h pr te ti n, whi h hall n t extend t the data r^{ma}terial it el , hall be with ut prejudi e t any pyright ub i ting in the data r terial it el .

. Ea h Party hall pr vide in re pe t work pr te ted under paragraph (1) thi Arti le, the e n ^{mi} right auth r and their u e r in intere t, a enu rated in the Berne C nventi n (1971). F r thi purp e, the Partie agree that u h right hall in lude the ll wing:

a. the right t auth rize r pr hibit the i rtati n int the territ ry the Party pie the work;

b. The right t prevent the i^{mp}rtati n int the territ ry the Party pie the work ^{ma}de with ut the auth rizati n the right h lder;

. the right t auth rize r pr hibit the p t publi di tributi n the riginal and ea h py a work by ale, rental, r therwi e;

d. in re pe t uter pr gra , the right t auth rize r pr hibit the r ial rental the riginal r pie the pyrighted work. Putting the riginal r pie u h uter pr gra n the rket with the ent the right h lder hall n t exhau t the rental right. In re pe t uter pr gra , thi bligati n d e n t apply t rental where the pr gra it el i n t an e ential bje t the rental; and

e. the right t aut^r rize r pr hibit the ni ati n a work t the publi^{me} .

3. The pr vi i n paragraph hall apply with ut r^{ma}lity r nditi n t pall ubje t ^{ma}tter vered by thi arti le, a well a t new right , intere t , and bene i iarie whi h are pr te ted under a Party' nati nal law.

4. With re pe t t work and und re rding^{mu} , ea h Party hall per^{mi}t that all e n right be reely and eparately tran erred thr ugh ntra t r the purp e their expl itati n and enj y^{me}nt by natural r legal per n . Ea h Party will en ure that natural r legal per n a quiring r h lding e n ^{mi} right by virtue ntra t r therwi e, in luding ntra t e l y^{me}nt underlying the reati n work and und re rding , hall be able t exer i e th e right in their wn na^{me} and enj y ully the bene it ^{me}derived there r^m.

5. Whenever the ter^m pr te ti n a work, ther than a ph t graphi work r a work applied art, i al ulated n a ba i ther than the lie a natural per n, u h ter^m hall be n le than i ty year r^m the end the alendar year auth rized publi ati n, r, ailing u h auth rized publi ati n within i ty year r the ^{ma}king the work, i ty year r^m the end the alendar year ^{ma}king.

6. Ea h Party hall n ine li^{mi}tati n up n rex epti n t ex lu ive right t ertain pe ial a e whi h d n t n li t with a n r^{ma}l expl itati n the work and d n t unrea nably prejudi e the legiti^{ma}te intere t the right h lder.

7. Tran lati n and repr du ti n li en e per^{mi}tted under the Appendix t the Berne C nventi n (1971) hall n t be granted where the legiti^{ma}te l al need a Party uld be ^{me}t by v luntary a ti n right h lder but r b ta le re ulting r a ure taken by that Party.

8. Neither Party ^{ma}y, a a nditi n a rding pr te ti n under thi Arti le r Arti le 5, require right h lder t ply with any r litie and nditi n in rder t a quire right in re pe t pyright and related right . I a Party grant any right r bene it in a work, ph n gra^m r vide gra^m, in luding re nerati n r levie r private pying r rental a tivity, all u h bene it hall be available n the ba i nati nal treat^{me}nt t nati nal the ther Party. A Party ^{ma}y require per n lai^{mi}ng u h right t pre ent appr priate eviden e upp rting their lai^a.

Arti le Five S und Re rding

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1. Ea h Party hall pr vide t pr du er und re rding the ll wing right : 2

- a. to author or holder of the right to direct or indirect reproduction of the sound recordings;
 - b. to author or holder of the right to importation into the territory of the Party of copies of the work;
 - c. to prevent the importation into the territory of the Party of copies of the work made without the authorization of the right holder;
 - d. the right to author or holder of the first lawful distribution of the original and each copy of a sound recording; and
 - e. to author or holder of the commercial rental of the original or copies of the sound recording. Putting the originals or copies of sound recordings on the market with the consent of the right holder shall not exhaust the right.
2. The term of protection available under this Agreement to sound recordings shall last at least until the end of a period of 50 years from the end of the calendar year in which the fixation was made.
3. Limitations upon and exceptions to the rights provided under this Agreement in respect of sound recordings shall be confined to certain special cases which do not conflict with a normal exploitation of the sound recordings and do not prejudice the legitimate interests of the right holder.

Article 12: Protection of Encrypted Satellite Signals

1. Each Party shall make it a criminal offence to manufacture, import, sell, lease, or otherwise make available in connection with commercial activities a device or system that is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of that signal.
2. Each Party shall make it an offence to receive, in connection with commercial activities, or to further distribute, an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signals or to engage in any activity prohibited under paragraph 1 of this Article. Each Party shall provide that actions may be taken by any person who holds an interest in the encrypted programming signal or the content thereof.

Article 13: Trademarks

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one person or entity from another shall be capable of constituting a trademark. Such signs, in particular, words, including personal names, designs, letters, numerals, colors, figurative elements, or the shape of goods or of their packaging shall be eligible for registration as trademarks.
2. Each Party shall refuse to register trademarks that consist of or comprise immoral, deceptive or scandalous matter, or matter that may be regarded as falsely suggesting a connection with persons, living or dead, institutions, beliefs or any Party's national symbols, or bringing them into disrepute.
3. The owner of a registered trademark shall have exclusive rights therein. He shall be entitled to prevent all third parties not having his consent from using in commerce identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is protected, where such use would result in a likelihood of confusion. The rights shall not prejudice any existing prior rights, nor shall they affect the possibility of Parties making rights available on their assets of use.
4. Acquisition of Rights
 - a. A trademark right may be acquired by registration or by use.
 - i. Each Party shall provide a system for the registration of trademarks which shall provide for the examination of applications and include provision of notification to an applicant of reasons for refusal to register a trademark and the opportunity to respond to such notification. Each Party shall uphold each trademark holder's right to sue for infringement promptly thereafter. Each Party shall afford other parties a reasonable opportunity to object to the cancellation of the registration and may afford a reasonable opportunity for other parties to oppose the registration of such a trademark.

c. The name of the goods or services which a trademark is to be applied shall in no case be an abusive designation of the trademark.

d. Each Party shall ensure that the registration shall cancel the designation and prohibit the trademark likely to cause confusion with a trademark which is considered to be well-known. In determining whether a trademark is well-known, account shall be taken of knowledge of the trademark in the relevant sector of the public, including knowledge in the Party obtained as a result of the trademark's promotion. A Party shall not require the proprietor of the trademark to extend beyond the sector of the public which normally deals with the relevant goods or services.

e. The rights described in paragraph 2 shall not prejudice any existing provisions which shall prevail over the provisions of this Part making rights available on the basis of use.

5. Initial designation of a trademark shall be for a term of at least 10 years. The designation of a trademark shall be indefinitely renewable in increments not less than 10 years when conditions for renewal have been met.

6. Requirements for Use

a. If the trademark is registered mainly in a trademark office, the designation may be canceled as soon as it is not used for a continuous period of at least two years, unless legitimate reasons exist. Use of the trademark with the consent of the owner shall be recognized as use of the trademark for purposes of maintaining the designation.

b. Legitimate reasons for not using shall include non-use due to circumstances arising independently of the trademark holder, such as import restrictions on the goods or services provided or specified by the trademark which constitute an abusive use of the trademark.

c. The use of a trademark in commerce shall not be encumbered by special requirements, such as those which restrict the manner in which a trademark is used or the way in which it is used with the trademark. This will not preclude a requirement prescribing the use of the trademark in identifying the undertaking producing the goods or services along with, but without linking it, the trademark distinguishing the specific goods or services in question from the undertaking.

7. Parties may determine conditions for the licensing and assignment of trademarks, it being understood that compulsory licensing of trademarks shall not be permitted and that the owner of a trademark shall have the right to assign his trademark with or without the business which the trademark belongs to.

Article 8 Geographical Indications Origin

1. Each Party shall provide, in respect of geographical indications, the legal means in effect to persons concerned:

a. the use of any means in the designation presented in a geographical indication suggests that the goods in question originate in a given geographical area, or that the geographical indication, in a manner that misleads the public as to the geographical origin of the goods; and

b. any use that constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

2. Each Party shall, in its own initiative or at the request of a holder of a geographical indication, invalidate the designation, a trademark containing a geographical indication with respect to goods having a geographical indication in the indicated area, or, in the case of a geographical indication in the trademark, such goods as such a name is misleading to the public as to the geographical origin of the goods.

3. Each Party shall also apply paragraphs 1 and 2 of Article 8 of the geographical indications law, although it may indicate that the area, or geographical area, in which the goods originate, is not the geographical area of the goods.

originate in another territory, region or locality.

4. Nothing in this Article shall be construed to require a Party to prevent continued and similar use of a particular geographical indication of another Party in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in that Party's territory, in:

- a. for at least 10 years or
- b. in good faith

before the date of signature of this Agreement.

5. Where a trademark has been applied for or registered in good faith or where rights to a trademark have been acquired through use in good faith, in:

- a. before the date of application of these provisions in that Party or
- b. before the geographical indication is protected in its Party of origin, no Party may adopt any measure to implement this Article that prejudices eligibility for or the validity of the registration of a trademark or the right to use a trademark on the basis that such a trademark is identical with or similar to a geographical indication.

6. No Party shall be required to apply this Article to a geographical indication if it is identical to the customary term in common language in that Party's territory for the goods or services to which the indication applies.

7. A Party may provide that any request made under this Article in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party, provided that the geographical indication is not used or registered in bad faith.

8. No Party shall adopt any measure implementing this Article that would prejudice any person's right to use, in the course of trade, its name or the name of its predecessor in business, except where such name forms all or part of a valid trademark in existence before the geographical indication became protected and with which there is a likelihood of confusion or such name is used in such a manner as to mislead the public.

9. Nothing in this Article shall be construed to require a Party to protect a geographical indication that is not protected or has fallen into disuse in the Party of origin.

Article Nine Patents

1. Patentable Subject Matter. Subject to subparagraphs a and b, each Party shall make patents available for inventions, whether products or processes, in all fields of technology, provided that such inventions are new, result from an inventive step and are capable of industrial application. For purposes of this Article, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful" respectively. Patents shall be available and patent rights enforceable without discrimination as to the field of technology and whether products are imported or locally produced.

a. A Party may exclude from patentability inventions if preventing in its territory the commercial exploitation of the inventions is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that the exclusion is not based solely on the ground that the Party prohibits commercial exploitation in its territory of the subject matter of the patent.

b. A Party may also exclude from patentability:

- i. diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
- ii. plants and animals other than microorganisms; and 1

iii. essential industrial processes for the production of products or animals, other than non-industrial and micro-industrial processes for such production.

Notwithstanding subparagraph 3, each Part shall provide for the protection of plant varieties through patents, an effective scheme of sui generis protection, or both.

2. Rights Conferred

a. A patent shall confer the right to prevent others not having the patent owner's consent from making, using, or selling the subject matter of the patent. In the case of a patented process, the patent confers the right to prevent others not having consent from using that process and from using, selling, or importing the product obtained directly from that process.

b. Where the subject matter of a patent is a process for obtaining a product, each Part shall provide that the burden of establishing that an alleged infringer in a product was not made by the process shall be on the alleged infringer in the event of the finding of infringement:

i. the product is new; or

ii. a substantial likelihood exists that the product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used. In the absence of and evaluation of evidence to the contrary, the legitimate interests of the defendant in protecting his trade secrets shall be taken into account.

c. A Part may revoke a patent in whole when:

a. grounds exist that would have justified a refusal to grant the patent; or

b. the grant of a compulsory license has not remedied the lack of exploitation of the patent.

3. Parties may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interest of third parties.

4. The term of protection available shall not end before the expiration of 20 years from the date of filing or 17 years from the date of grant of the patent. Each Part is encouraged to extend the term of patent protection, in appropriate cases, to compensate for delays caused by requirements for approval processes.

5. Use Without The Authorization of the Right Holder

Where the law of a Part allows for use of the subject matter of a patent, other than that use allowed under paragraph 3, without the authorization of the right holder, including use by the government or other persons authorized by the government, the Part shall respect the following provisions:

a. authorization of such use shall be considered on its individual merits;

b. such use may not be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by a Part in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, with or without making a patent search, knows or has demonstrated grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

c. the scope and duration of such use shall be limited to the purpose for which it was authorized;

d. such use shall be non-exclusive;

e. such use shall be non-assigned, except with that part of the enterprise or dwelling that enjoys such use;

f. any such use shall be authorized predominant for the supply of the Part's domestic market; and

g. author at o o such use shall be l able, subject to adequate p ote ct o o the leg t mate te ests o the pe so s so autho ed, to be te mi ated a d whe the c cumsta ces that led to t cease to ex st a d a e u l kely to ecu . The compete t autho ty shall have the autho ty to ev ew, o mot vated equest, the co t ued ex ste ce o these c cumsta ces;

h. the ght holde shall be pa d adequate emu e at o the c cumsta ces o each case, tak g to accou t the eco omic value o the autho at o ;

. the legal val d ty o a y dec s o elat g to the autho at o shall be subject to jud c al o othe depe de t ev ew by a d st ct h ghe autho ty;

j. a y dec s o elat g to the emu e at o p ov ded espect o such use shall be subject to jud c al o othe depe de t ev ew by a d st ct h ghe autho ty;

k. the a ty shall ot be obl ged to apply the co d t o s set out subpa ag aphs (b) a d () whe e such use s pe mtted to emedy a p act ce dete mi ed a te jud c al o admi st at ve p ocess to be a t compet t ve. The eed to co ect a t compet t ve p act ces may be take to accou t dete mi g the amou t o emu e at o such cases. Compete t autho tes shall have the autho ty to e use te mi at o o autho at o a d whe the co d t o s that led to such autho at o a e l kely to ecu ; a d

1. the a ty shall ot autho e the use o the subject matte o a pate t to pe mit the explo tat o o a othe pate t except as a emedy o a adjud cated v olat o o domest c laws ega d g a t compet t ve p act ces.

A t cle Te Layout-Des g s o Semico ducto I teg ated C cu ts

1. a tes ag ee to p ov de p ote ct o to the layout-des g s (topog aph es) o teg ated c cu ts (he e a te e e ed to as "layout-des g s") acco da ce w th A t cles 2-7 (othe tha pa ag aph 3 o A t cle 6), A t cle 12 a d pa ag aph 3 o A t cle 16 o the Teaty o I tellectual ope ty Respect o I teg ated C cu ts a d, add t o , to comply w th pa ag aphs 2-4 he eo .

2. Subject to the p ov s o s o subpa ag aph a o pa ag aph 3 below, the a tes shall co s de u law ful the ollow i g acts pe o med w thout the autho at o o the ght holde : mpo t g, sell g, o othe wise d st but g o comme cal pu poses a p ote cted layout-des g , a teg ated c cu t wh ch a p ote cted layout- P des g s co po ated, o a a t cle co po at g such a teg ated c cu t o ly so a as t co t ues to co ta a u law fully ep oduced layout-des g .

3. Acts Not Requ g the Autho at o Po the Holde o the R ght

a. Notw thsta d g pa ag aph 2 above, e the a ty shall co s de u law ful the pe o ma ce o a y o the acts e e ed to that pa ag aph espect o a teg ated c cu t co po at g a u law fully ep oduced layout-des g o a y a t cle co po at g such a teg ated c cu t whe e the pe so pe o mi g o o de g such acts d d ot k ow a d had o easo able g ou d to k ow, whe acqu g the teg ated c cu t o a t cle co po at g such a teg ated c cu t, that t co po ated a u law fully ep oduced layout-des g . a tes shall p ov de that, a te the t me that such pe so has ece ved su ce t ot ce that the layout-des g was u law fully ep oduced, he may pe o m a y the acts w th respect to the stock o ha d o o de ed be o e such t me, but shall be l able to pay to the holde o the ght a sum equ vale t to a easo able oyalty such as would be payable u de a eely egot ated l ce se espect o such a layout-des g .

b. The co d t o s-set out sub-pa ag aphs (a) th ough (k) o a t cle 9 pa ag aph 5 above shall apply mutat s muta d s the eve t o a y o -volu ta y l ce s g o a layout-des g o o ts use by o o the gove me t w thout the autho at o o the ght holde .

4. Te m o ote ct o .

a. I each a ty equ g eg st at o as a co d t o o p ote ct o , the te m o p ote ct o o layout-des g s shall P ot e d be o e the exp at o o a pe od o te yea s cou ted om the date o l g a appl cat o o eg st at o o om the st comme cal explo tat o whe eve the wo ld t occu s.

b. If a Par sn rquir r gis ra i n as a c n i i n f r p r c i n , la u - signs shall b pr c f r a
rm f n l ss han n ars fr m h a f h firs c mmerical xpl i a i n wh r v r i n h worl i ccurs.

C. N wi hs an ing paragraphs 1 an ab v , a Par ma pr vi ha pr c i n shall laps fif n ars af r
h cr a i n f h la u - sign.

Ar icle El v n Ac s C n rar H on s C mmercial Prac ic s an h Pr c i n f Tra S cr s

1. Each Party shall provide all legal means for an prompt and efficient resolution of all disputes, including the acquisition, use and disposal of the property, in accordance with the applicable law, in a manner consistent with the commercial practices, insofar as:

a. h inf rma i n i s s cr in h s ns ha i is n ,, as a b r in h pr cis c nfigura i n an ass mbl f
i s c mp n n s, g n rall kn wn among r r a il acc ssibl p rs ns ha n rmall al wi h h kin f
inf rma i n i n qu s i n;

b. the information has actual personal or commercial value because it is secret; and

C. h p rs n lawfull in c n r l f h inf rma i n has ak n r as nabl s ps un r h circums anc s k p i
s cr .

7. N i h r Par shall limi n ura i n fpr c i n f r r a s cr s s l ng as h c n i i ns in paragraph 1 xis .

3. N i h r Par shall isc urag r imp v lun ar lic nsing f ra s cr s b imp sing xc ssiv r
iscrimina r c n i i ns n such lic ns s r c n i i ns which ilu h valu f ra s cr s.

4. R e q u i r m e n t s f o r I n f o r m a t i o n S u b m i t t e d P a r t i s

a. If a Par r quir s, as a c n i i n f appr ving h mark ing f pharmac u ical r agricul ural ch mical pr uc s which u iliz n w ch mical n i i s, h submissi n fun iscl s s r h r a a, h r gina i n f which inv lv s a c nsi rabl ff r , ha Par shall pr c such a a agains unfair c mmercial us . Fur h r , ach Par shall pr c such a a agains iscl sur xc p wh r n c ssar pr c h public runl ss s ps ar ak n nsur ha h a a is pr c agains unfair c mmercial us .

b. Unl ss h p rs n submi ing h inf rma i n agr s, h a a ma n b r li up n f r h appr val f
c mp ing pr uc s f r a r as nabl p ri f ime, aking in acc un h ff r s inv lv in h r gina i n f
h a a, h i r na ur , an h xp n i ur inv lv in h i r pr para i n, an such p ri f ime shall g n rall
b n l ss han fiv ars fr m h a f mark ing appr val.

c. Where a Participant is up and a mark is approved, the Participant, however, is not permitted to exclusively use the trademark submitted in connection with obtaining the approval. The Participant shall commence with the trademark's first mark approval.

Article Twelve Enforcement of Intellectual Property Rights

1. General Provisions

a. Par i s shall nsur ha n f rc men pr c ur s as sp cifi in his ar icl ar availabl un r na i nal laws s as p rmi ff civ ac i n agains an ac f infrng men fin ll cu al pr p r igh s c v r b his Agr men inclu ing xp i i us r me i s pr v n r s p infrng men an r me i s which c ns i u a rr n fur h r infrng men s. In appl ing h s pr c ur s an r me i s, par i s shall pr vi saf guar s agains abus an shall av i cr a ing bs acl s l gi ma ra .

b. Pr c ur s f r n f r c i n g i n l l c u a l p r p r r i g h s s h a l l b f a i r a n q u i a b l . T h s h a l l n b u n n c s s a r i l
c m p l i c a r c s l , r n a i l u n r a s n a b l i m e - l i m i s r u n w a r r a n l a s .

c. Decisions on the merits of a case shall, as a general rule, be in writing and be reasoned. The court shall be made known as to the parties the dispute with the union or labor. Decisions on the merits of a case shall be based on the evidence in respect of which parties were afforded the opportunity to be heard.

d. Each Party has provided an opportunity for judicial review of final administrative decision on the merits of an action concerning the protection of an intellectual property right. Subject to jurisdictional provisions in each Party's laws concerning the importance of a case, an opportunity for judicial review of the legal aspects of initial judicial decision on the merits of a case concerning the protection of an intellectual property right shall also be provided.

e. In order to avoid having a case where an obligation is put in place a judicial remedy for the enforcement of intellectual property rights derived from the enforcement of laws in general, no domestic law affecting the capacity of each Party to enforce its laws in general. Nothing in this Article shall be an obligation with respect to the distribution of economic activity between enforcement of intellectual property rights and the enforcement of laws in general.

2. Specific Procedures and Remedies of Civil Action

a. Each Party shall make available to the holder of civil judicial procedures concerning the enforcement of an intellectual property right covered by its Agreements. Defendants in such procedures shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties to such procedures shall be allowed to be represented independently, and procedures shall not impose undue economic burdens concerning mandatory pre-trial appearances. A party to such procedures shall be duly notified of substantial allegations and opportunities to present relevant evidence. The procedures shall provide a means to identify and protect confidential information.

b. Each Party shall provide judicial authority the authority to order a party to a proceeding to do so from an infringement, including to prevent the entry into the channel of commerce in the jurisdiction of imported goods that involve the infringement of an intellectual property right. The Parties shall also be required to accord such authority in the event of protected subject matter acquired or ordered to be performed in violation of knowing or having established grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

c. Each Party shall provide judicial authority the authority where a party has presented substantial evidence sufficient to support its claims and has specified evidence relevant to substantial allegations of its claims which are in the control of the opposing party, to order that party to produce the opposing party's subject in appropriate case to conditions which ensure the protection of confidential information.

d. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise will not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Party shall accord judicial authority the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complainant's allegations and the party's adverse affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

e. Each Party shall provide judicial authority the authority to order the infringer to pay the holder of damage adequate compensation for the injury the holder has suffered because of an infringement of his intellectual property rights by an infringer who knew or had established grounds to know that he was engaged in infringing activities.

f. In order to ensure an effective deterrent to infringement, each Party shall provide judicial authority the authority to order that goods that have found to be infringing be, without compensation of any kind, destroyed or disposed of or the channel of commerce of such goods shall be closed to avoid causing any harm to the holder of the right. The judicial authority shall also have the authority to order that measures and implement the predominant use of which have been in the creation of the infringing goods be, without compensation of any kind, destroyed or disposed of or the channel of commerce of such goods shall be closed to minimize the risk of further infringement. In considering such equitable remedies, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of the parties shall be taken into account.

4. E c P rty ll provi e for crimi l proce ure pe ltie to be pplie tle ti c e of willful
tr emark cou terfeiti g copyrig t pir cy o commerci l c le. Pe ltie v il ble ll i clu e
impri o me t mo et ry fi e ufficie t to provi e effective eterre t i ppropri te c e t e eizure,
forfeiture e tructio of t e i fri gi g goo of y evice t e pre omi t u e of whic bee i t e
commi io of t e offe ce. E c P rty may provi e for crimi l proce ure pe ltie to be pplie i c e of T

infringement of intellectual property rights, in particular where it is committed willfully and in contempt of law.

Article 17. Definitions

For purposes of this Agreement:

1. "Integrated circuit" shall mean a product, in its final form or an intermediate form, in which the elements, the least one of which is an active element, and some or all of the interconnected elements are integrated in a single piece of material and which is intended to perform an electronic function.
2. "A manner contrary to honest commercial practice" is understood to include practices such as theft, bribery, breach of contract, inducement to breach, electronic and other forms of commercial espionage, and the acquisition, use or disclosure of trade secrets by third parties who knew, or should reasonably have known, that such practices were involved in their acquisition of such information.
3. An "encrypted satellite signal" is a program-carrying satellite signal which has been processed electronically in a manner otherwise for the purpose of preventing intelligible reception of the program content intended to be received without modification of the signal.
4. "Nation" for the purposes of this Agreement, in respect of the relevant intellectual property rights, shall be understood to mean a natural or legal person that would meet the criteria of eligibility for protection provided for in the Paris Convention, the Berne Convention (1971) and the Geneva Convention. With respect to the protection of layout-designs of semiconductor integrated circuits, "nation" shall be:
 - a. natural persons who are nationals of, or domiciled in the territory of, one of the Parties; and
 - b. legal entities which, natural persons who, in the territory of either of the Parties, have a real and effective establishment for the creation of layout-designs of integrated circuits.
5. An "original design" is a layout design that is the result of its creator's own intellectual effort and is not a commonplace or commonplace design of layout designs and manufacturers of integrated circuits at the time of its creation.
6. With respect to the right in Article 17, paragraph 2(e) to authorize or prohibit the communication of works to the public, the term "public" shall include, with respect to rights of communication and performance, works provided for under Articles 11, 11bis (i), (ii) and (iii) and 14.1(ii) of the Berne Convention and with respect to dramatic, dramatic-music, music and cinematographic works, a gathering of individuals intended to be the object of, and capable of perceiving, communications or performances, regardless of whether the communication takes place at different times or in different places, provided that such a gathering is larger than the family and its immediate circle of acquaintances and is not a group comprising a limited number of individuals having similar characteristics that has not been formed for the principal purpose of receiving such performances and communications.
7. "Right holder" includes the right holder personally, and, in the case of a natural or legal person, authorized by the right holder as an exclusive licensee of the right, or other authorized persons, including federations and associations, having legal standing under domestic law to assert such rights.
8. "Trademark" shall include service marks, collective and certification marks.

Article 18. General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute means for arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or disguised restrictions on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations consistent with this Agreement relating to the protection and enforcement of intellectual property rights and the prevention of deceptive practices. /

Article i tee tio I Security

The provisio s o this Agreeeme t sh ll ot be co strued to preve t either P rty rom t ki g y ctio i pursuit o its oblig tio s u der the U ited tio s Ch rter or the mai te ce o i ter tio I pe ce d security or which it co siders ecess ry or the protectio o its esse ti l security i terests

1. rel ti g to issio ble materi ls or the materi ls rom which they re derived;
2. rel ti g to the tr ic i rms, mmu itio , d impleme ts o war d to such tr ic i other goods d materi ls s is c rried o directly or i directly or the purpose o supplyi g milit ry est blishme t; or
3. t ke i time o war or other emerge cy i i ter tio I rel tio s.

Article Sixtee Co sult tio s

The P rties gree to co sult promptly t the request o either P rty upo y matter co cer i g the i terpret tio , impleme t tio or oper tio o this Agreeeme t.

Article Seve tee E try i to orce d i I Provisio s

1. E ctive upo sig ture, e ch P rty grees th t where there is legis tive uthority or impleme ti g oblig tio s u der this Agreeeme t, the ecess ry regul tio s will be made withi i e mo ths. E ch P rty grees to exert its best e orts to e ct, withi eightee mo ths rom the sig i g o this Agreeeme t, the legis tio d regul tio s ecess ry to impleme t its provisio s.
2. Articles 1 through 16 o this Agreeeme t sh ll come i to orce upo the P rties' exch ge o otes i dic ti g th t ll the legis tio d regul tio s ecess ry to give ull e ect to the oblig tio s u dert ke herei h ve come i to orce.
3. This Agreeeme t sh ll remai i orce or i iti l period o te ye rs d sh ll co ti ue i orce there ter u til termi ted i ccord ce with this p r gr ph. Either P rty may, by givi g o e ye r's otice to the other P rty, termi te this Agreeeme t t the e d o the i iti l te -ye r period or t y time there ter. :

DO E this 17th d y o March, 1994, i Ki gsto , i duplic te, i the E glish l gu ge. :

OR THE GOVER ME T O F THE U ITED STATES O F AMERICA

OR THE GOVER ME T O F JAMAICA

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