

2. A Party may provide its competent authorities, in accordance with its law, 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, if that right holder has filed a legally sufficient claim for copyright or related rights infringement, and if that information is being sought for the purpose of protecting or enforcing those rights.

3. Each Party shall endeavour to promote cooperative efforts within the business community to effectively address copyright or related rights infringement while preserving legitimate competition and, consistent with that Party's domestic law, preserving fundamental principles such as freedom of expression, fair process, and privacy.

4. Each Party shall adopt or maintain measures to curtail copyright and related right infringement on the Internet or other digital network.

5. Each Party shall implement the procedures referred to in this Article 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 expression, fair process, and privacy.<sup>3</sup>

#### **Article 11.8: Special Requirements Related to Border Measures**

1. For the purposes of this Article, goods infringing an intellectual property right mean counterfeit trademark goods or pirated copyright goods as defined in footnote 14 of Article 51 of the TRIPS Agreement.<sup>4</sup>

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<sup>3</sup> For instance, the procedures in this Article are without prejudice to a Party's law, adopting or maintaining a regime providing for limitations on the liability of, or on the remedies available against, online service providers while preserving the legitimate interests of right holders.

<sup>4</sup> Footnote 14 of the TRIPS Agreement contains the following definitions:

- (a) "counterfeit trademark goods" shall mean 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 of importation;
- (b) "pirated copyright goods" shall mean 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 of importation.