



Sachstand

Urheberrechtliche Regelungen in ACTA, CETA und TTIP Gegenüberstellung und Verhältnis zum EU-Acquis

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Urheberrechtliche Regelungen in ACTA, CETA und TTIP

Gegenüberstellung und Verhältnis zum EU-Acquis

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Der vorliegende Sachstand wurde innerhalb von drei Werktagen erstellt.

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1. Einleitung

Gegenstand des vorliegenden Sachstands ist eine summarische Untersuchung urheberrechtsrelevanter Inhalte der zur Zeit der Erstellung des Sachstands verfügbaren (Entwurfs-)Texte zum Anti-Counterfeiting Trade Agreement (ACTA)¹, zum Comprehensive Economic and Trade Agreement (CETA)² und zum Transatlantic Trade and Investment Partnership (TTIP)³. In einem ersten Schritt soll die auf einer summarischen Sichtung beruhende Gegenüberstellung wortlautidentischer oder inhaltlich ähnlicher Passagen erfolgen. Sodann soll schlaglichtartig aufgezeigt werden, welche Auswirkungen CETA und TTIP auf das einschlägige EU-Urheberrecht zukommen könnte.

2. Gegenüberstellung urheberrechtsrelevanter Regelungen

2.1. TTIP

Die Verhandlungen zum TTIP laufen derzeit und haben im Bereich des Geistigen Eigentums offenbar noch nicht zur Ausformulierung von konkreten Vertragstexten geführt.⁴ Vielmehr laufen derzeit die Vorbereitungen hierzu dergestalt, dass die EU-Kommission eine Konsultation der Mitgliedstaaten zum Geistigen Eigentum durchführt, um eine Verhandlungsposition zu konkretisieren.⁵ Ein konkreter Abgleich der einschlägigen Thematik mit den Entwurfstexten der anderen Übereinkommen ist deshalb aktuell nicht möglich.

2.2. CETA und ACTA

Eine Gegenüberstellung der gegenwärtig bekannten Entwurf Fassungen von CETA und ACTA ergibt folgende Ähnlichkeiten und Übereinstimmungen im Bereich des Urheberrechts:

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- 1 Text Stand Mai 2011, abrufbar unter http://www.mofa.go.jp/policy/economy/i_property/pdfs/acta1105_en.pdf (Stand dieser und sämtlicher nachfolgenden Online-Quellen: 19. Mai 2014).
 - 2 Entwurfstext abrufbar unter Europäische Kommission, CETA – Draft Texts as of 17 December 2013, Rats-Dok. DS 2088/13 – EU RESTRICTED, <http://eudoxap01.bundestag.btg:8080/eudox/dokumentInhalt?id=70452>.
 - 3 Vgl. hierzu grundsätzlich den EU-Sachstand Transatlantische Handels- und Investitionspartnerschaft – TTIP, PE-Dok 144/2014, Stand 6. Mai 2014, abrufbar unter http://eudoxap01.bundestag.btg:8080/eudox/dokument?id=113246&searchHistoryId=NUMMERNKREIS1400486540148&rowId=1_name_Outer sowie umfassend das TTIP-Dossier in EuDoX, abrufbar unter http://eudoxap01.bundestag.btg:8080/eudox/dossierChronologischAnsicht?id=79792&searchHistoryId=NUMMERNKREIS1399275241668&rowId=3_name_Outer.
 - 4 Vgl. Drahtbericht BRUEEU 1645/2014 der Bundesregierung vom 1. April 2014 zum TTIP-Expertentreffen am 31. März 2014, Themengebiet Intellectual Property Rights – nur für den Dienstgebrauch, <http://eudoxap01.bundestag.btg:8080/eudox/dokumentInhalt?id=76507>.
 - 5 Vgl. Rats-Dok. DS 1215/14 vom 30. April 2014 – EU RESTRICTED, http://eudoxap01.bundestag.btg:8080/eudox/dokument?id=112958&searchHistoryId=NUMMERNKREIS1399275241668&rowId=7_name_Outer.

CETA	ACTA
<p>Article 4A - Disclosure of Information</p> <p>Nothing in this Chapter shall require a Party to disclose information that would otherwise be contrary to its law or exempt from disclosure under its law, including its laws and regulations concerning access to information and privacy.</p>	<p>ARTICLE 4: PRIVACY AND DISCLOSURE OF INFORMATION</p> <p>1. Nothing in this Agreement shall require a Party to disclose:</p> <p>(a) information, the disclosure of which would be contrary to its law, including laws protecting privacy rights, or international agreements to which it is party;</p> <p>(b) confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest; or</p> <p>(c) confidential information, the disclosure of which would prejudice the legitimate commercial interests of particular enterprises, public or private.</p> <p>2. When a Party provides written information pursuant to the provisions of this Agreement, the Party receiving the information shall, subject to its law and practice, refrain from disclosing or using the information for a purpose other than that for which the information was provided, except with the prior consent of the Party providing the information.</p>
<p>Article 13 - General Obligations</p> <p>1. The Parties shall ensure that any procedures for the enforcement of intellectual property rights are fair and equitable, and are not unnecessarily complicated or costly, nor entail unreasonable time-limits or unwarranted delays. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.</p> <p>2. In implementing the provisions of this Sub-Section, each Party shall take into account the need for proportionality between the seriousness of the infringement, the interests of third parties, and the applicable measures, remedies and penalties.</p> <p>3. Articles 14 to 23 relate to civil enforcement.</p> <p>4. For the purposes of Articles 14 to 23, unless otherwise mentioned, "intellectual property rights" means all categories of intellectual property that are</p>	<p>ARTICLE 6: GENERAL OBLIGATIONS WITH RESPECT TO ENFORCEMENT</p> <p>1. Each Party shall ensure that enforcement procedures are available under its law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.</p> <p>2. Procedures adopted, maintained, or applied to implement the provisions of this Chapter shall be fair and equitable, and shall provide for the rights of all participants subject to such procedures to be appropriately protected. These procedures shall not</p>

<p>the subject of Sections 1 through 7 of Part II of the Agreement on Trade-Related Aspects of Intellectual Property Rights.</p>	<p>be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.</p> <p>3. In implementing the provisions of this Chapter, each Party shall take into account the need for proportionality between the seriousness of the infringement, the interests of third parties, and the applicable measures, remedies and penalties.</p> <p>4. No provision of this Chapter shall be construed to require a Party to make its officials subject to liability for acts undertaken in the performance of their official duties.</p>
<p>Article 17 - Right of Information</p> <p>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 shall have the authority, upon a justified request of the right holder, to order the infringer or 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 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>ARTICLE 11: INFORMATION RELATED TO INFRINGEMENT</p> <p>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 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>Article 18 - Provisional and Precautionary Measures</p> <p>1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional and precautionary measures, including an interlocutory injunction, against a party, or where appropriate, against a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of an intel-</p>	<p>ARTICLE 12: PROVISIONAL MEASURES</p> <p>1. Each Party shall provide that its judicial authorities have the authority to order prompt and effective provisional measures:</p> <p>(a) against a party or, where appropriate, a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of</p>

<p>lectual property right from occurring, and in particular, to prevent infringing goods from entering the channels of commerce.</p> <p>2. Each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.</p> <p>3. Each Party shall provide that, in the case of an alleged infringement of an intellectual property right committed on a commercial scale, the judicial authorities may order, in accordance with domestic law, the precautionary seizure of property of the alleged infringer, including the blocking of its bank accounts and other assets. To that end, the judicial authorities may order the communication of relevant bank, financial or commercial documents, or access to other relevant information, as appropriate.</p>	<p>any intellectual property right from occurring, and in particular, to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce;</p> <p>(b) to preserve relevant evidence in regard to the alleged infringement.</p> <p>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>3. 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 seizure or other taking into custody of suspect goods, and of materials and implements relevant to the act of infringement, and, at least for trademark counterfeiting, documentary evidence, either originals or copies thereof, relevant to the infringement.</p> <p>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>5. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement of an intellectual property right, the judicial authorities shall have the</p>
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	authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.
<p>Article 19 - Other remedies</p> <p>1. The Parties shall ensure that the judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the definitive removal from the channels of commerce, or the destruction, of goods that they have found to be infringing an intellectual property right. The Parties shall ensure that the judicial authorities may order, if appropriate, destruction of materials and implements predominantly used in the creation or manufacture of those goods. In considering a request for such remedies, the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of third parties, shall be taken into account.</p> <p>2. The Parties shall ensure that the judicial authorities have the authority to order that those remedies shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.</p>	<p>ARTICLE 10: OTHER REMEDIES</p> <p>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>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>3. A Party may provide for the remedies described in this Article to be carried out at the infringer's expense.</p>
<p>Article 20 – Injunctions</p> <p>1. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall 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 infringing goods from entering into the channels of commerce.</p> <p>2. Notwithstanding the other provisions of this Section, a Party may limit the remedies available against use by government, or by third parties authorized by government, without the use of authorization of the right holders to the payment of remuneration provided that the Party complies with the provisions of Part II of the TRIPS Agreement specifically addressing such use. In other cases, the rem-</p>	<p>ARTICLE 8: INJUNCTIONS</p> <p>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>2. Notwithstanding the other provisions of this Section, a Party may limit the remedies available against use by governments, or by third parties authorized by a government, without the authorization of the right holder, to the payment of remuneration, provided that the Party complies with the provisions</p>

<p>edies under this Section shall apply or, where these remedies are inconsistent with a Party's law, declaratory judgments and adequate compensation shall be available.</p>	<p>of Part II of the TRIPS Agreement specifically addressing such use. In other cases, the remedies under this Section shall apply or, where these remedies are inconsistent with a Party's law, declaratory judgments and adequate compensation shall be available.</p>
<p>Article 21 - Damages</p> <p>1. Each Party shall provide that:</p> <p>(a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer who knowingly or with reasonable grounds to know, engaged in infringing activity of intellectual property rights to pay the right holder:</p> <p>(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; or</p> <p>(ii) the profits of the infringer that are attributable to the infringement, which may be presumed to be the amount of damages referred to in paragraph (i);</p> <p>(b) in determining the amount of damages for infringements of intellectual property rights, its judicial authorities may consider, inter alia, any legitimate measure of value that may be submitted by the right holder, including lost profits.</p> <p>2. As an alternative to the previous paragraph, a Party's law may provide for payment of remuneration, such as a royalty or fee, to compensate a right holder for the unauthorized use of its intellectual property.</p>	<p>ARTICLE 9: DAMAGES</p> <p>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>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>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:</p> <p>(a) pre-established damages; or</p> <p>(b) presumptions 3 for determining the amount of damages sufficient to compensate the right holder for the harm caused by the infringement; or</p>

	<p>(c) at least for copyright, additional damages.</p> <p>4. Where a Party provides the remedy referred to in subparagraph 3(a) or the presumptions referred to in subparagraph 3(b), it shall ensure that either its judicial authorities or the right holder has the right to choose such a remedy or presumptions as an alternative to the remedies referred to in paragraphs 1 and 2.</p> <p>5. (...)</p>
<p>Article 22 - Legal Costs</p> <p>Each Party shall provide that its judicial authorities, where appropriate, shall have the authority to order, at the conclusion of civil judicial proceedings concerning the enforcement of intellectual property rights, that the prevailing party be awarded payment by the losing party of legal costs and other expenses, as provided for under that Party's law.</p>	<p>ARTICLE 9: DAMAGES</p> <p>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>Article 24 – Border Measures</p> <p>(footnote: It is understood that there shall be no obligation to apply the procedures set forth in this Section to goods put on the market in another country by or with the consent of the right holder.)</p>	<p>Section 3: Border Measures</p> <p>(footnote: It is understood that there shall be no obligation to apply the procedures set forth in this Section to goods put on the market in another country by or with the consent of the right holder.)</p>
<p>Article 24.1 – Scope of Border Measures</p> <p>1. [CA: For the purposes of this Article, 'goods infringing an intellectual property right' shall at least include goods that are subject to footnote 14 of Article 51 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.] (Note:Canada is aware that the outcome of discussions regarding export may necessitate changes to these definitions.)</p> <p>[EU: For the purposes of this Article, 'goods infringing an intellectual property right apply notably in respect of:</p> <p>(a) trademark;</p>	<p>ARTICLE 13: SCOPE OF THE BORDER MEASURES</p> <p>In providing, as appropriate, and consistent with its domestic system of intellectual property rights protection and without prejudice to the requirements of the TRIPS Agreement, for effective border enforcement of intellectual property rights, a Party should do so in a manner that does not discriminate unjustifiably between intellectual property rights and that avoids the creation of barriers to legitimate trade.</p>

(b) copyright;

(c) geographical indication; and

(d) design.]

(Note: Definitions in support of Geographical Indications and Design would be required were these concepts to form part of an agreed scope.)

2. Each Party shall adopt or maintain procedures with respect to import [EU: and export] shipments under which a right holder may request its competent authorities to suspend the release of, or detain goods suspected of infringing an intellectual property right.

3. Each Party shall adopt or maintain procedures with respect to import [EU: and export] shipments under which its competent authorities may act on their own initiative to temporarily suspend the release of, or detain goods suspected of infringing an intellectual property right to provide a right holder an opportunity to formally request assistance under paragraph 2.

[CA: 3A. Where a Party has entered into arrangements to establish a common security perimeter to conduct harmonized customs clearance procedures, it shall not be required to apply the obligations of paragraphs 2 and 3 of this Article at internal borders within the perimeter.]

4. Each Party may adopt or maintain procedures with respect to transshipments and shipments in customs transit [EU: and exports] under which a right holder may request its competent authorities to suspend the release of, or detain goods suspected of infringing an intellectual property right.

5. Each Party may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or small quantities of goods of a noncommercial nature sent in small consignments.

6. For the purposes of this Article:

<p>(a) “Import shipments” means shipments of goods brought into the territory of a Party from a place outside that territory, while those goods remain under customs control. This definition includes goods brought into the territory to a free zone or customs warehouse, but excludes shipments in customs transit and transhipments.</p> <p>(b) “Shipments in customs transit” means shipments of goods that enter the territory of a Party from a place outside that territory and are authorized by customs authorities for transport under continuous customs control from an office of entry to an office of exit, for the purpose of exiting the territory. Shipments in customs transit that are subsequently approved for removal from customs control without exiting the territory are considered to be import shipments.</p> <p>(c) “Transhipments” means shipments of goods that are transferred under customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation.</p> <p>(d) “Export shipments” means shipments of goods which are to be taken from the territory of a Party to a place outside that territory, excluding shipments in customs transit and transhipments.</p>	
<p>Article 24.2 – Application by the Right Holder</p> <p>1. Each Party shall provide that its competent authorities require a right holder that requests the procedures described in Article 24.1 to provide adequate evidence to satisfy the competent authorities that, under the law of the Party providing the procedures, there is prima facie 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 recognisable by the competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to the procedures described in Article 24.1.</p>	<p>Article 17: APPLICATION BY THE RIGHT HOLDER</p> <p>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 prima facie 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</p>

<p>2. Each Party shall provide for applications to suspend the release of, or to detain goods⁴suspected of infringing an IPR listed Article 24.1, under customs control in its territory.The competent authorities may provide for such applications to apply to multiple shipments. Each Party may provide that, at the request of the right holder, the application to suspend the release of, or to detain suspect goods may apply to selected points of entry and exit under customs control.</p> <p>3. Each Party shall ensure that its competent authorities inform the applicant within a reasonable period whether they have accepted the application. Where its competent authorities have accepted the application, they shall also inform the applicant of the period of validity of the application.</p> <p>4. A Party may provide that, where the applicant has abused the procedures described in Article 24.1, or where there is due cause, its competent authorities have the authority to deny, suspend, or void an application.</p>	<p>Measures).</p> <p>2. Each Party shall provide for applications to suspend the release of, or to detain, any suspect goods under customs control in its territory. A Party may provide for such applications to apply to multiple shipments. A Party may provide that, at the request of the right holder, the application to suspend the release of, or to detain, suspect goods may apply to selected points of entry and exit under customs control.</p> <p>3. Each Party shall ensure that its competent authorities inform the applicant within a reasonable period whether they have accepted the application. Where its competent authorities have accepted the application, they shall also inform the applicant of the period of validity of the application.</p> <p>4. A Party may provide that, where the applicant has abused the procedures described in subparagraphs 1(b) and 2(b) of Article 16 (Border Measures), or where there is due cause, its competent authorities have the authority to deny, suspend, or void an application.</p>
<p>Article 24.3 – Provision of Information from the Right Holder</p> <p>Each Party shall permit its competent authorities to request a right holder to supply relevant information that may reasonably be expected to be within the right holder’s knowledge to assist the competent authorities in taking the border measures referred to in this Article. Each Party may also allow a right holder to supply such information to its competent authorities.</p>	<p>ARTICLE 15: PROVISION OF INFORMATION FROM THE RIGHT HOLDER</p> <p>Each Party shall permit its competent authorities to request a right holder to supply relevant information to assist the competent authorities in taking the border measures referred to in this Section. A Party may also allow a right holder to supply relevant information to its competent authorities.</p>
<p>Article 24.4 – Security or Equivalent Assurance</p> <p>Each Party shall provide that its competent authorities have the authority to require a right holder that requests the procedures described in Article 24.1 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</p>	<p>ARTICLE 18: SECURITY OR EQUIVALENT ASSURANCE</p> <p>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</p>

<p>these procedures.</p> <p>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>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>Article 24.5 – Determination as to Infringement</p> <p>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 24.1, whether the suspect goods infringe an intellectual property right.</p>	<p>ARTICLE 19: DETERMINATION AS TO INFRINGEMENT</p> <p>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.</p>
<p>Article 24.6 – Remedies</p> <p>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 24.5 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.</p> <p>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>3. Each Party may provide that its competent authorities have the authority to impose administrative penalties following a determination referred to in Article 24.5 that the goods are infringing.</p>	<p>ARTICLE 20: REMEDIES</p> <p>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.</p> <p>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>3. A Party may provide that its competent authorities have the authority to impose administrative penalties following a determination referred to in Article 19 (Determination as to Infringement) that</p>

	the goods are infringing.
<p>[Article 24.7 – Management of Risk at the Border</p> <p>1. In order to enhance the effectiveness of border enforcement of intellectual property rights, the competent authorities of a Party may share information with the competent authorities of the other Party on border enforcement of intellectual property rights, including relevant information to better identify and target for inspection shipments suspected of containing infringing goods.]</p> <p>(Note: In response to the EU’s interest in text speaking to co-operation related to border measures, Canada asked whether language drawn from ACTA Article 29.1(b) could be of interest. Both parties agreed that text of this nature would need to be accompanied by text to addresses privacy concerns.</p> <p>Both sides will reflect and may wish to look at ACTA Article 33.3 which is pasted here for information:</p> <p>Cooperation under this Chapter shall be conducted consistent with relevant international agreements, and subject to the laws, policies, resource allocation, and law enforcement priorities of each Party).</p>	<p>ARTICLE 29: MANAGEMENT OF RISK AT BORDER</p> <p>1. In order to enhance the effectiveness of border enforcement of intellectual property rights, the competent authorities of a Party may:</p> <p>(a) consult with the relevant stakeholders, and the competent authorities of other Parties responsible for the enforcement of intellectual property rights to identify and address significant risks, and promote actions to mitigate those risks; and (b) share information with the competent authorities of other Parties on border enforcement of intellectual property rights, including relevant information to better identify and target for inspection shipments suspected of containing infringing goods.</p> <p>2. Where a Party seizes imported goods infringing an intellectual property right, its competent authorities may provide the Party of export with information necessary for identification of the parties and goods involved in the exportation of the seized goods. The competent authorities of the Party of export may take action against those parties and future shipments in accordance with that Party’s law.</p>

3. Auswirkungen auf den EU-Urheberrechts-Acquis

Welches Verhältnis CETA und TTIP zum EU-Urheberrechts-Acquis haben können, hängt notwendigerweise zuvörderst von der konkreten letztgültigen Ausgestaltung der Vertragstexte ab. Ein materieller Abgleich der derzeitigen Entwurfstexte mit dem gesamten EU-Urheberrechts-Acquis kann im vorliegenden Rahmen nicht vorgenommen werden, weshalb lediglich punktuell auf Folgendes hingewiesen werden soll:

Eine frühere Analyse der Wissenschaftlichen Dienste ist zu dem Ergebnis gekommen, dass der ACTA-Text mit dem EU-Acquis vereinbar wäre und keinen Anpassungsbedarf zeitigte.⁶ Insofern Passagen der derzeitigen Entwurfsfassung des CETA mit dem ACTA-Text übereinstimmen, ist dieser Befund auf das CETA übertragbar.

6 Miriam Denking, Vereinbarkeit des Anti-Counterfeiting Trade Agreement (ACTA) mit europäischem Recht, Ausarbeitung der Wissenschaftliche Dienste, 2011 (WD 11-3000-279/10).

Weiterhin ist darauf hinzuweisen, dass für die Mitgliedstaaten der EU und die EU selbst der WIPO-Urheberrechtsvertrag (WIPO Copyright Treaty, WCT⁷) und der WIPO-Vertrag über Darbietungen und Tonträger (WIPO Performances and Phonograms Treaty, WPPT⁸) am 14. März 2010 in Kraft getreten sind, nachdem die Richtlinie 2001/29/EG vom 22. Mai 2001 zur Harmonisierung bestimmter Aspekte des Urheberrechts und der verwandten Schutzrechte in der Informationsgesellschaft in allen Mitgliedstaaten in nationales Recht umgesetzt worden ist.⁹

Hinsichtlich der CETA-Passagen ohne ACTA-Entsprechung kann deshalb ein Abgleich sowohl mit EU-Recht als auch mit faktisch zum EU-Acquis zählendem internationalen Urheberrecht auch unter Einschluss von WCT und WPPT vorgenommen werden. Eine solche Gegenüberstellung ergibt hier folgende weitere Ähnlichkeiten:

CETA	EU-Urheberrechts-Acquis
<p>Article 4 Exhaustion</p> <p>Nothing in this Chapter shall affect the freedom of the Parties to determine whether and under what conditions the exhaustion of intellectual property rights applies.</p>	<p>Article 6 WCT – Right of Distribution</p> <p>(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works through sale or other transfer of ownership.</p> <p>(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the author.</p>
<p>Article 5.2 – Broadcasting and Communication to the Public</p> <p>1. The Parties shall provide performers the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.</p> <p>2. The Parties shall ensure that a single equitable</p>	<p>Article 15 WPPT - Right to Remuneration for Broadcasting and Communication to the Public</p> <p>(1) Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.</p> <p>(2) Contracting Parties may establish in their national legislation that the single equitable remuneration</p>

7 WIPO Copyright Treaty vom 20. Dezember 1996, abrufbar unter http://www.wipo.int/treaties/en/text.jsp?file_id=295166#P87_12240.

8 WIPO Performances and Phonograms Treaty (WPPT) vom 20. Dezember 1996, abrufbar unter http://www.wipo.int/treaties/en/text.jsp?file_id=295578#P126_16257.

9 Dreier, in: Dreier/Schulze (Hrsg.), UrhG, 4. Auflage 2013, Einleitung, Rdn. 47.

<p>remuneration is paid by the user if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. The Parties may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.</p>	<p>shall be claimed from the user by the performer or by the producer of a phonogram or by both. Contracting Parties may enact national legislation that, in the absence of an agreement between the performer and the producer of a phonogram, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.</p> <p>(3) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of paragraph (1) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply these provisions at all.</p> <p>(4) For the purposes of this Article, phonograms made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they had been published for commercial purposes.</p>
<p>Article 5.3 - Protection of Technological Measures</p> <p>5.3(1) 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.</p> <p>5.3(2) In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 5.3(1), each Party shall provide protection at least against:</p> <p>(a) to the extent provided by its law:</p> <p>(i) the unauthorized circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know; and (ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure;</p> <p>and</p>	<p>Artikel 6 Richtlinie 2001/29/EG</p> <p>Obligations as to technological measures</p> <p>1. Member States shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.</p> <p>2. Member States shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:</p> <p>(a) are promoted, advertised or marketed for the purpose of circumvention of, or</p> <p>(b) have only a limited commercially significant purpose or use other than to circumvent, or</p> <p>(c) are primarily designed, produced, adapted or</p>

<p>(b) the manufacture, importation, or distribution of a device or product, including computer programs, or provision of a service that:</p> <p>(i) is primarily designed or produced for the purpose of circumventing an effective technological measure; or</p> <p>(ii) has only a limited commercially significant purpose other than circumventing an effective technological measure.</p> <p>5.3(2.1) Under paragraph 5.3(2) “to the extent provided by its law” means that Parties have flexibility in implementing paragraphs 5.3(2)(a)(i) and (ii).</p> <p>5.3(3) In implementing paragraphs 5.3(1) and (2), 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 contravene its measures implementing these paragraphs. The intention of this provision is that this Agreement does not require a Party to mandate interoperability in its law, i.e., there is no obligation for the ICT (Information Communication Technology) industry to design devices, products, components, or services to correspond to certain technological protection measures.</p> <p>5.3(4) In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraph 5.3(1), a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraphs 5.3(1) and (2). The obligations set forth in paragraphs 5.3(1) and (2) are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party’s law.</p>	<p>performed for the purpose of enabling or facilitating the circumvention of, any effective technological measures.</p> <p>3. For the purposes of this Directive, the expression ‘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 or other subjectmatter, which are not authorised by the rightholder of any copyright or any right related to copyright as provided for by law or the sui generis right provided for in Chapter III of Directive 96/9/EC. Technological measures shall be deemed ‘effective’ where the use of a protected work or other subjectmatter is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.</p> <p>4. Notwithstanding the legal protection provided for in paragraph 1, in the absence of voluntary measures taken by rightholders, including agreements between rightholders and other parties concerned, Member States shall take appropriate measures to ensure that rightholders make available to the beneficiary of an exception or limitation provided for in national law in accordance with Article 5(2)(a), (2)(c), (2)(d), L 167/18 EN Official Journal of the European Communities 22.6.2001 (2)(e), (3)(a), (3)(b) or (3)(e) the means of benefiting from that exception or limitation, to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject-matter concerned.</p> <p>A Member State may also take such measures in respect of a beneficiary of an exception or limitation provided for in accordance with Article 5(2)(b), unless reproduction for private use has already been made possible by rightholders to the extent necessary to benefit from the exception or limitation concerned and in accordance with the provisions of Article 5(2)(b) and (5), without preventing rightholders from adopting adequate measures regarding the number of reproductions in accordance</p>
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	<p>with these provisions.</p> <p>The technological measures applied voluntarily by rightholders, including those applied in implementation of voluntary agreements, and technological measures applied in implementation of the measures taken by Member States, shall enjoy the legal protection provided for in paragraph 1.</p> <p>The provisions of the first and second subparagraphs shall not apply to works or other subject-matter made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.</p> <p>When this Article is applied in the context of Directives 92/ 100/EEC and 96/9/EC, this paragraph shall apply mutatis mutandis.</p> <p>-----</p> <p>Article 11 WCT – Obligations concerning Technological Measures</p> <p>Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.</p>
<p>Article 5.4 - Protection of Rights Management Information</p> <p>5.4(1) To protect electronic rights management information,² 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 having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related rights:</p> <p>(a) to remove or alter any electronic rights management information;</p> <p>(b) to distribute, import for distribution, broadcast, communicate, or make available to the public copies of works, performances, or phonograms, know-</p>	<p>Article 12 WCT – Obligations concerning Rights Management Information</p> <p>(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing 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 right covered by this Treaty or the Berne Convention:</p> <p>(i) to remove or alter any electronic rights management information without authority;</p>

<p>ing that electronic rights management information has been removed or altered without authority.</p> <p>5.4(2) In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraph 5.4(1), a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraph 5.4(1). The obligations set forth in paragraph 5.4(1) are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law.</p>	<p>(ii) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.</p> <p>(2) As used in this Article, "rights management information" means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.⁹</p>
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Dem entspricht, dass Artikel 5.1 CETA-Entwurf ausdrücklich auf die Revidierte Berner Übereinkunft¹⁰ sowie WCT und WPPT verweist:

„1. The Parties shall comply with the Berne Convention for the Protection of Literary and Artistic Works (1886, last amended in 1979), the WIPO Copyright Treaty – WCT (Geneva, 1996), and the WIPO Performances and Phonograms Treaty – WPPT (Geneva, 1996). The Parties shall comply with Articles 1 through 22 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961).

2. The moral rights of the authors and performers shall be protected in accordance with Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works and Article 5 of the WIPO Performances and Phonograms Treaty (WPPT).

3. To the extent permitted by the treaties referred to in paragraph 1, nothing in this Chapter shall be construed as restricting each Party's ability to limit intellectual property protection to performances that are fixed in phonograms.”

10 Berne Convention for the Protection of Literary and Artistic Works, abrufbar unter http://www.wipo.int/treaties/en/text.jsp?file_id=283698.