



NAFTA: The First Major International Trade Agreement To Protect IP Rights

NAFTA established minimum standards for protecting and enforcing intellectual property rights, based on principles set out in pre-existing international intellectual property conventions.

NAFTA ensures that intellectual property rights do not inhibit trade if not enforced or enforced in a discriminatory or inconsistent manner. Its national treatment leads to non-discrimination and consistent enforcement between trading partners. NAFTA established dispute-settlement procedures with trade-related sanctions to aid in enforcement. In addition to the enforcement and border provisions in Chapter 17, the more general enforcement provisions in Chapters 11 and 20 apply to enforcing intellectual property rights.

While NAFTA remains a source of obligations for NAFTA states and of the rights of intellectual property holders in these countries, protecting and enforcing intellectual property rights has continued to develop.

The World Trade Organization subsequently adopted General Agreement on Tariffs and Trade (GATT), and the agreement known as the Trade Related Aspects of Intellectual Property Rights (TRIPs). GATT-TRIPs covers intellectual property protection in the more than 100 countries that are parties to the agreement. The provisions of the specific NAFTA chapter on intellectual property are extremely similar to those adopted in GATT.

COPYRIGHT

NAFTA countries are required to protect creative works covered under the Berne Convention that embody original expression. NAFTA partners must protect computer programs as literary works, all types of data as compilations, and other types of creative expression.

Principal U.S. change: Restored protection for certain works on which U.S. copyright had previously terminated.

TRADEMARK

NAFTA's trademark provisions enable owners of registered trademarks to prevent the use of identical or similar marks for goods or services that are identical or similar to the trademarked goods or services if confusion would be likely.

Principal U.S. change: Preclude the registration of a trademark that is geographically misdescriptive even if it acquired a secondary meaning.

PATENT

NAFTA countries are required to give patent owners the opportunity to obtain patent protection per broader conventions and also for pharmaceutical and agricultural chemical inventions as product patents. NAFTA allows states to bar patents to protect public order or morality and those related to certain treatment of humans, animals, or plants; or to avoid serious prejudice to nature or the environment.

Principal U.S. change: Permit reliance on activities occurring in a NAFTA country to prove a date of invention for obtaining a patent.

Adopting a 20-year patent term and creating a provisional patent application provide new opportunities and challenges for the entire patent community since NAFTA's enactment.

Miller Canfield assists clients in securing, protecting, managing, and enforcing their intellectual property rights, including copyright, trademark, patent, various designs, trade secret, and related rights. Call us if you'd like help obtaining or protecting your intellectual property rights in all NAFTA countries.

Intellectual Property
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