

Problem Set 3

1. The United States and the European Union have a perennial dispute over the protection of moral rights. To help resolve this dispute, Congress is considering the addition of section 106B of the 1976 Copyright Act, which grants moral rights protection to all copyrighted works. In determining whether the work warrants moral rights protection, the draft section requires the following factors be considered:

the nature and intensity of modifications of or other interference with the work, as well as its reversible or irreversible character; the number of people or the size of the public addressed by the use of the infringing work; whether the author created the work in an employment relationship or as a self-employed author, or whether a commissioning party had or had not decisive influence onto the final result of the creation; and the possible consequences for the professional life of the author, and, of course, his [or her] honor and reputation.

PAUL GOLDSTEIN, INTERNATIONAL INTELLECTUAL PROPERTY LAW: CASES AND MATERIALS 293 (2001). Would section 106B succeed in resolving the U.S.-EU dispute over moral rights protection? Has the proposal struck the right balance?

2. Can a member of the TRIPs Agreement provide sui generis protection to computer programs? If yes, can such protection be offered as an additional form of protection (i.e., protection outside copyright laws)? If no, why not?
3. Although the Berne Convention requires countries that are outside the Berne Union accede to the latest act of the Convention, any existing member of the Union is entitled to decide whether or not to accede to or ratify the new act. In other words, a country that has ratified the 1928 Rome Act can remain as a member of the Berne Union without acceding to or ratifying the 1971 Paris Act. Your client is interested in conducting business in Fantasia, a state that has acceded to the 1948 Brussels Act and has joined the World Trade Organization. Your client could not find any information concerning whether Fantasia has acceded to the 1967 Stockholm Act or the 1971 Paris Act. To clarify Fantasia's treaty obligations, he seeks your advice. How would you advise him? Which text of the Berne Convention does Fantasia abide by?
4. Mickeymania recently adopted legislation that allows cybercafes to play mp3 as background music without paying any royalties to composers, recording artists, producers, and collection agencies provided the cybercafes donate 3% of its annual earnings to the Eldred Legal Defense Fund. The U.S. music industry is very concerned about this legislation and actively lobbies the government to put pressure on Mickeymania, which has since joined the World Trade Organization and abides by the TRIPs Agreement. Rosen Hilary, the Minister of Information in Mickeymania, insists that the TRIPs Agreement does not cover mp3. According to her, "What does people know about mp3s way back in the early 1990s?" Yet, Ms. Hilary is very concerned that her country may be subject to unilateral sanctions from the United States. Can the United States apply unilateral sanctions without undergoing the dispute settlement procedure as stipulated in the WTO Agreement? Can the United States take unilateral action if the procedure does not resolve the matter to the United States' satisfaction? If yes, what is the advantage of having such a procedure? If no, what other actions can the United States take?

5. Shortly after the signing of the TRIPs Agreement, the developed countries noticed the need for stronger protection of digital copyright, performance and sound recording rights, and database protection. Meanwhile, the less developed countries also noticed their need for stronger protection of folklore, traditional knowledge, and indigenous creations and practices. As a member of the U.S. delegation, would you recommend a compromise between these two sets of rights in the upcoming revision of the TRIPs Agreement? Why and why not? What would be your compromise? Would your decision be different if you are a member of the Peruvian delegation?

6. On October 9, 2002, the United States Supreme Court will hear oral arguments in *Eldred v. Ashcroft*, a case challenging the constitutionality of the Sonny Bono Copyright Term Extension Act. If the European Union were granted 5 minutes during the oral arguments, which side would it support? And Why? What about Mickey Mouse if here were to argue before the Court on his own behalf? Which side would he support? And why?