

Problem Set 4

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 that 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 §106B succeed in resolving the U.S.-EU dispute over moral rights protection? Would this section comply with the TRIPs Agreement?

2. Can a member of the TRIPs Agreement afford *sui generis* protection to non-original, non-creative databases? If yes, can such protection be offered as additional protection outside the scope of copyright laws? If no, why not?
3. 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 Electronic Frontier Foundation. 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?
4. Shortly after the signing of the TRIPs Agreement, developed countries noticed the need for stronger protection of digital copyright, performance and sound recording rights, and database protection. Meanwhile, 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?