

UNITED STATES - SECTION 110(5) OF THE US COPYRIGHT ACT

Recourse by the European Communities to Article 22.2 of the DSU

The following communication, dated 7 January 2002, from the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

The European Communities and their Member States (hereafter "the EC") request that a special meeting of the Dispute Settlement Body be held on 18 January 2002 in order to consider the following agenda item:

United States – Section 110(5) of the US Copyright Act: Recourse by the EC to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes

The Panel in this dispute found that Section 110(5)(B) of the United States Copyright Act violates Articles 11bis(1)(iii) and 11(1)(ii) of the Berne Convention (1971) as incorporated into the TRIPS Agreement by Article 9.1 of that Agreement. On 27 July 2000, the Dispute Settlement Body (the DSB) adopted the Panel report. The DSB recommendations and rulings include the recommendation that the United States bring its Copyright Act in conformity with the provisions of the TRIPS Agreement.

Arbitration under Article 21.3(c) of the Dispute Settlement Understanding (the DSU) subsequently determined that the "reasonable period of time" for the United States to implement the DSB's recommendations and rulings would expire on 26 July 2001. Following a US request and in order to facilitate negotiations between the parties, the Dispute Settlement Body decided to extend the reasonable period of time until 31 December 2001 or to the date on which the current session of the US Congress adjourns, whichever earlier. The United States has failed to implement the recommendations and rulings of the Dispute Settlement Body with respect to its Copyright Act by that date, and no mutually acceptable arrangement has yet been made. Therefore, the EC is entitled to request authorization from the DSB to suspend concessions or other obligations under Article 22.2 of the DSU.

Hereby, the EC requests the authorization of the DSB to suspend its obligations under the TRIPS Agreement in order to permit the levying of a special fee from US nationals in connection with border measures concerning copyright goods.

The level of EC benefits which are nullified or impaired as a result of Section 110(5)(B) of the US Copyright Act has been determined through arbitration under Article 25 of the DSU. The amount so determined is €1,219,900. In accordance with Article 22.4 of the DSU, the EC will fix the amount of the special fee referred to above so as to ensure that the level of affected US benefits will

./.

not exceed the level of EC benefits nullified or impaired as a result of the WTO-inconsistent provisions of the US Copyright Act.
