

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

Notification of a Mutually Satisfactory Temporary Arrangement

The following communication, dated 23 June 2003, from the Permanent Mission of the United States and the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated at the request of those delegations.

The United States of America and the European Communities wish to notify the Dispute Settlement Body of the attached mutually satisfactory temporary arrangement in the dispute *United States - Section 110(5) of the US Copyright Act* (WT/DS160).

Please circulate this notification and attachment to the Dispute Settlement Body.

Mutually Satisfactory Temporary Arrangement
United States – Section 110(5) of the US Copyright Act (WT/DS160)

On the basis of:

- The adopted panel report in the matter WT/DS160, *United States – Section 110(5) of the US Copyright Act*, and the resulting recommendation of the Dispute Settlement Body ("DSB") that the United States bring Section 110(5)(B) of the US Copyright Act in conformity with the TRIPS Agreement,
- Article 22 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), which provides, *inter alia*, that "the DSB shall continue to keep under surveillance the implementation of adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented",
- The arbitration on the level of nullification or impairment conducted under Article 25 of the DSU, and the resulting Award of the Arbitrators (WT/DS160/ARB25/1),
- The particular nature of the benefits that are nullified or impaired as a result of Section 110(5)(B),

The United States and the European Communities have reached the following temporary arrangement:

1. The United States shall make a lump-sum payment in the amount of \$3.3 million (the "Payment") to a fund to be set up by performing rights societies in the European Communities for the provision of general assistance to their members and the promotion of authors' rights (the "Fund").
2. The Payment serves as a mutually satisfactory temporary arrangement regarding the dispute, for the three-year period commencing 21 December 2001. At least 45 days prior to the end of this period, if the dispute has not been resolved by that time, the parties will enter into consultations with a view toward reaching a final resolution.
3. Unless otherwise agreed, at any time after the end of the three-year period referred to in paragraph 2, or in case the United States fails to make the Payment within 45 days from the date on which the European Communities notifies the United States in writing that the Fund has been established, the EC may request that the arbitration under Article 22.6 of the DSU be resumed.
