

equitable market access to U.S. persons who rely on intellectual property protection. (Section 192 is commonly referred to as the "Special 301" provisions in the Trade Act.) In addition, the USTR is required to determine which of these countries should be identified as priority foreign countries. Acts, policies or practices which are the basis of a country's identification as a priority foreign country are normally the subject of an investigation under the Section 301 provisions of the Trade Act. Section 182 of the Trade Act contains a special rule for the identification of actions by Canada affecting United States cultural industries.

USTR requests written submissions from the public concerning foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under Section 182 of the Trade Act.

DATES: Submissions must be received on or before 12:00 noon on Monday, February 23, 1998.

ADDRESSES: Submissions should be sent to Sylvia Harrison, Special Assistant to the Section 301 Committee, Room 416, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Director for Intellectual Property (202) 395-6864; Steve Fox, Deputy Director for Intellectual Property (202) 395-6864, or GERALYN S. RITTER, Associate General Counsel (202) 395-6800, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Pursuant to Section 182 of the Trade Act, the USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as priority foreign countries. Acts, policies or practices which are the basis of a country's designation as a priority foreign country are normally the subject of an investigation under the Section 301 provisions of the Trade Act.

USTR may not identify a country as a priority foreign country if it is entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

Section 182 contains a special rule regarding actions of Canada affecting United States cultural industries. The USTR is obligated to identify any act, policy or practice of Canada which affects cultural industries, is adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). Any such act, policy or practice so identified shall be treated the same as an act, policy or practice which was the basis for a country's identification as a priority foreign country under Section 182(a)(2) of the Trade Act (i.e., such acts, policies or practices shall be the subject of a Section 301 investigation under the "Special 301" procedures), unless the United States has already taken action pursuant to Article 2106 of the NAFTA.

USTR must make the above-referenced identifications within 30 days after publication of the National Trade Estimate (NTE) report, i.e., no later than April 30, 1998.

Requirements for Submissions

Submissions should include a description of the problems experienced and the effect of the acts, policies and practices on U.S. industry. Submissions should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies and practices. Any submissions that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be sent to Sylvia Harrison, Special Assistant to the Section 301 Committee, Room 416, 600 17th Street, N.W., Washington, D.C. 20508, no later than 12:00 noon on Monday, February 23, 1998. Because submissions will be placed in a file open to public inspections at USTR, business-confidential information should not be submitted.

Public Inspection of Submissions

Within one business day of receipt, submissions will be placed in a public file, open for inspection at the USTR Reading Room, in Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, D.C. An appointment to review the file may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 10:00 a.m. to

12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

Joseph Papovich,

Assistant USTR for Services, Investment and Intellectual Property.

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D-16]

WTO Dispute Settlement Proceedings: Ireland—Measures Affecting the Grant of Copyright and Neighboring Rights, and European Communities— Measures Affecting the Grant of Copyright and Neighboring Rights

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the Office of the United States Trade Representative (USTR) is providing notice that the United States has requested the establishment of a dispute settlement panel under the Agreement Establishing the World Trade Organization, to examine whether the legal regime in Ireland complies with the obligations in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). USTR also invites written comments from the public concerning the issues raised in these disputes.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before February 20, 1998, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Greg Gerdes, Office of Monitoring and Enforcement, Room 501, Attn: Ireland TRIPS Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Director for Intellectual Property (202) 395-6864, or GERALYN S. RITTER, Associate General Counsel, (202) 395-6800, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

SUPPLEMENTARY INFORMATION: On January 9, 1998, the United States formally requested establishment of a WTO dispute settlement panel to examine whether the legal regime in

Ireland is inconsistent with the obligations of the TRIPS Agreement. The WTO Dispute Settlement Body (DSB) considered the U.S. request at its meeting on January 22, 1998. Under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, the DSB must establish a panel at the next DSB meeting where this request is on the agenda, unless the DSB determines by consensus otherwise. Under normal circumstances, the panel would be expected to issue a report detailing its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States and Legal Basis of Complaints

In separate cases filed against Ireland and the European Communities, the United States has requested the establishment of a panel to examine whether the legal regime in Ireland fails to conform to the obligations in Articles 9, 13, 14, 41, 42, 43, 44, 45, 46, 47, 48, 61, 63, 65 and 70 of the TRIPS Agreement.

All developed country Members of the World Trade Organization ("WTO") are currently obligated to provide copyright and neighbouring rights in accordance with Section 1 of Part II, and the related provisions in Article 70, of the TRIPS Agreement. Such Members are also obligated to comply with the enforcement provisions in Sections 1, 2 and 5 of Part III of the TRIPS Agreement.

Ireland and the European Communities were obligated to implement the provisions of the TRIPS Agreement as of January 1, 1996. The legal regime in Ireland, however, does not comply fully with the obligations described in Articles 9, 13, 14, 41, 42, 43, 44, 45, 46, 47, 48, 61, 65 and 70. In addition, to the extent that Ireland and the European Communities have adopted measures to implement Articles 9, 13, 14, 41, 42, 43, 44, 45, 46, 47, 48, 61, 65 and 70 of the TRIPS Agreement, but have not published such measures or notified them to the Council for TRIPS, they have failed to comply with Article 63 of the TRIPS Agreement.

Article 9 of the TRIPS Agreement establishes the relationship of the TRIPS Agreement to the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works of 24 July 1971 ("Berne Convention"), and requires that Members comply with Articles 1 through 21 of the Berne Convention and the Appendix thereto, with the exception of Article 6*bis* of that Convention. The legal regime in Ireland fails to comply with Article 9 of the TRIPS Agreement because it is

inconsistent with the Berne Convention in various respects. For example, the legal regime in Ireland does not cover translations of official works, protection of architectural works, anonymous and pseudonymous works, and ownership of rights in film.

Under the TRIPS Agreement, Members must confine limitations and exceptions to exclusive rights required under Section 1 of Part II "to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder." Under the legal regime in Ireland, the exceptions to right holders' exclusive rights exceed those permissible under Article 13 of the TRIPS Agreement.

In Article 14, the TRIPS Agreement contains requirements regarding the grant of rental rights to producers of phonograms and any other right holder in phonograms. The legal regime in Ireland is not consistent with this provision.

The legal regime in Ireland does not provide civil remedies with respect to the unauthorized making of phonograms or cinematographic films from a performance and the unauthorized broadcast of such performance. The legal regime in Ireland is thus inconsistent with Sections 1 and 2 of Part III of the TRIPS Agreement.

Under article 61 of the Trips Agreement, Members must provide for criminal procedures and penalties to be applied in cases of copyright piracy on a commercial scale. Remedies available must include "imprisonment and/or monetary fines sufficient to provide a deterrent * * *." Under Article 41 of the TRIPS Agreement, Members must ensure that the enforcement procedures specified in the Agreement are available under their law so as to "permit effective action against any act of infringement of intellectual property rights" covered by the TRIPS Agreement, including "remedies which constitute a deterrent to further infringements." The criminal fines and terms of imprisonment available under the legal regime in Ireland are insufficient to provide an effective deterrent against copyright piracy in Ireland.

The legal regime in Ireland also does not provide adequate protection to pre-existing works, phonograms, and performances for a full term of protection. In this respect, the legal regime in Ireland is inconsistent with Articles 9, 12, 14 and 70 of the TRIPS Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

- (1) Must so designate that information or advice;
- (2) must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and
- (3) is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D-16 ("Ireland/EC TRIPS Implementation")) may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Amelia Porges,

Senior Counsel for Dispute Settlement.

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