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EUROPEAN COMMUNITIES - MEASURES AFFECTING THE
GRANT OF COPYRIGHT AND NEIGHBOURING RIGHTS

Request for the Establishment of a Panel by the United States

The following communication, dated 9 January 1998, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

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 Agreement on Trade-Related Aspects of Intellectual Property Rights (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 1 January 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 of the TRIPS Agreement. 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, ownership of rights in film, and the recognition of bodies established to protect the rights of unknown authors of unpublished works.

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.

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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 preexisting 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.

In a communication dated 6 January 1998, the United States requested consultations with the European Communities pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article 64 of the TRIPS Agreement to the extent that it incorporates by reference Article XXIII of the General Agreement on Tariffs and Trade 1994. Consultations were held on 9 January 1998. After these consultations, the United States and the European Communities jointly considered that, for purposes of the last sentence of Article 4.7 of the DSU, the consultations had failed to settle the dispute.

Accordingly, the United States respectfully requests the establishment of a panel to examine this matter in light of the TRIPS Agreement, and to find that 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, and nullifies or impairs benefits accruing directly or indirectly to the United States under the TRIPS Agreement.

The United States asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body scheduled to be held on 22 January 1998 and that the panel be established with standard terms of reference as set out in Article 7 of the DSU.
