

**DEPARTMENT OF STATE****[Public Notice 3565]****Privacy Act of 1974 as Amended;  
Removal of a System of Records**

Notice is hereby given that the Department of State is removing a system of records, "Privacy Act Requests Records, STATE-40" pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), and in accordance with the record-keeping practices and the reorganization of the Bureau of Administration.

As reported in Public Notice 3487 dated November 27, 2000 (65 FR 75761, No. 233, December 4, 2000), the relevant records reflected in STATE-40 are now part of "Information Access Programs Records STATE-35," and STATE-40 consequently has been removed.

Dated: January 29, 2001.

**Patrick F. Kennedy,**

*Assistant Secretary for the Bureau of Administration, Department of State.*

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**OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE****[Docket No. WTO/D-160]****WTO Dispute Settlement Proceeding  
Regarding Section 110(5) of the U.S.  
Copyright Act**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative ("USTR") is providing notice of the date by which the United States is to respond to the recommendations and rulings of the Dispute Settlement Body ("DSB") of the World Trade Organization ("WTO") in United States—Section 110(5) of the U.S. Copyright Act, a dispute brought by the European Communities (the "EC"), to examine Section 110(5) of the U.S. Copyright Act. In this dispute, the EC alleged that Section 110(5) is inconsistent with obligations of the United States under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). After full briefing and hearings, the Panel determined that Section 110(5)(A) (the "homestyle exemption") did not violate the TRIPS Agreement, but that Section 110(5)(B) (the "Fairness in Music Licensing Act of 1998") was inconsistent with U.S. obligations. In September 2000, the United States confirmed to the DSB its

commitment to implement the recommendations and rulings of the DSB in a manner which respects U.S. WTO obligations. As a result of arbitral proceedings the United States has a period of twelve months from the date of adoption of the panel report—i.e., until July 27, 2001—to implement the recommendations and rulings of the DSB. The USTR invites written comments from the public concerning the manner in which it should respond.

**DATES:** Comments should be submitted by February 26, 2001, to be assured of timely consideration by the USTR in developing a response to the DSB recommendations and rulings.

**ADDRESSES:** Comments are to be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: U.S.—Section 110(5) Dispute, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:**

Melida N. Hodgson, Associate General Counsel, (202) 395-3582; Claude Burcky, Director of Intellectual Property, (202) 395-6864.

**SUPPLEMENTARY INFORMATION:** On April 15, 1999, the EC submitted a request for the establishment of a WTO dispute settlement panel to examine Section 110(5) of the U.S. Copyright Act, which provides that, under certain conditions, the communications of musical works via a radio or television by certain establishment shall not constitute copyright infringement. The DSB established a panel for this purpose on May 26, 1999, and the panel was composed on August 6, 1999. In June 15, 2000, after full briefing and hearings, the panel issued recommendations and rulings. These were adopted by the DSB on July 27, 2000. In August and September 2000 the United States affirmed that it would implement the DSB's recommendations and rulings. On October 23, 2000 the EC requested arbitration on the reasonable period of time for the United States to implement the DSB's recommendations and rulings. The arbitrator issued a report on January 15, 2001, granting the United States a period of twelve months, or until July 27, 2001 to implement the DSB's recommendations and rulings.

**Major Issues Raised and Legal Basis of the Complaint**

The EC alleged that Section 110(5), as amended by the Fairness in Music Licensing Act of 1998, violates Article 9(1) of the TRIPS Agreement, which incorporates Articles 1 to 21 of the Berne Convention for the Protection of

Literary and Artistic Works (the "Berne Convention"). More specifically, the EC alleged that Section 110(5) is inconsistent with Articles 11(1) and 11bis(1) of the Berne Convention which grants authors of literary and artistic works, including musical works, certain exclusive rights. Section 110(5) provides under subparagraph (A) that the communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes is not an infringement of copyright unless a direct charge is made to see or hear the transmission, or the transmission thus received is further transmitted to the public. Subparagraph (B) of Section 110(5) provides that, under certain conditions relating, inter alia, to the size of the establishment and the number of loudspeakers or audiovisual devices, the communication by an establishment of a transmission or retransmission embodying a performance or display of a nondramatic musical work intended to be received by the general public, originated by a licensed radio or television broadcast station, is not an infringement of copyright.

The Panel found that Section 110(5)(A) was consistent with the TRIPs Agreement, but that Section 110(5)(B) was too broad and therefore did not satisfy the requirements of an exception to TRIPs.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. 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 submitting person. 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 the 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 submitting person believes that information or advice may qualify as such, the submitting person—